

GAHC010127132024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Crl.)/603/2024

BRAJESWAR BORDOLOI
S/O LATE SURATH BORDOLOI, VILLAGE KALIAJARI, PS MORIGAON, DIST
MORIGAON, ASSAM 782105

VERSUS

THE STATE OF ASSAM AND ANR
REP BY THE PP, ASSAM

2:KATIRAM BANGTHAI
S/O LATE ASHOK BANGTHAI

RESIDENT OF KALIYAJARI
PS MORIGAON
DIST MORIGAON
ASSAM 78210

Advocate for the Petitioner : MR A ATREYA, MR D K BHATTACHARYYA

Advocate for the Respondent : PP, ASSAM,

Linked Case : Crl.A./204/2022

BRAJESWAR BORDOLOI AND 4 ORS.
S/O LATE SURATH BORDOLOI
VILLAGE KALIAJARI
PS MORIGAON
DIST MORIGAON

ASSAM 782105

2: SUSHIL BORDOLOI
S/O SRI BRAJESWAR BORDOLOI

VILLAGE KALIAJARI
PS MORIGAON
DIST MORIGAON
ASSAM 782105

3: SHANTI BORDOLOI
S/O SRI BRAJESWAR BORDOLOI

VILLAGE KALIAJARI
PS MORIGAON
DIST MORIGAON
ASSAM 782105

4: RANJAN BORDOLOI
S/O SRI BRAJESWAR BORDOLOI

VILLAGE KALIAJARI
PS MORIGAON
DIST MORIGAON
ASSAM 782105

5: JAYANTA BORDOLOI
S/O SRI BRAJESWAR BORDOLOI

VILLAGE KALIAJARI
PS MORIGAON
DIST MORIGAON
ASSAM 782105
VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PP
ASSAM

2:KATIRAM BANGTHAI
S/O LATE ASHOK BANGTHAI

RESIDENT OF KALIYAJARI
PS MORIGAON
DIST MORIGAON
ASSAM 782105

Advocate for : MR A ATREYA

Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 10.09.2024
(K.R. Surana, J)

Heard Mr. D.K. Bhattacharyya, learned counsel for the applicant. Also heard Mr. K.K. Das, learned APP appearing for the opposite party no.1 State.

2. By filing this interlocutory application under Section 389(2) Cr.P.C., the applicant, who is the convict in Sessions Case No. 24/2015, decided by the Sessions Judge, Morigaon, by judgment dated 02.06.2022 and sentence dated 08.06.2022, has prayed for suspension of sentence.

3. The learned counsel for the applicant has submitted that the applicant was taken for medical evaluation before the Gauhati Medical College & Hospital, Guwahati and referring to the medical report annexed to this application as Annexure-3, it is submitted that the condition of the applicant is deteriorating. It is also submitted that two sons of the applicant, namely, Shanti Bordoloi and Ranjan Bordoloi are also lodged along with the applicant in the District Jail, Morigaon and as per his instruction, they are taking care of the applicant, who is about 75 years of age (mentioned as 72 years in the medical report).

4. The learned APP has opposed the prayer for suspension of sentence and it is submitted that the applicant has been awarded life imprisonment by the judgment dated 02.06.2022 and sentence dated 08.06.2022, which is impugned in the connected appeal. Accordingly, it is submitted that there is

every chance that the applicant may vanish or escape from serving out the sentence.

5. It is seen from the medical documents annexed to the application as Annexure-3 that the applicant was admitted in Gauhati Medical College & Hospital, Guwahati on 01.07.2024 and he was discharged on 03.07.2024 and at that point, the applicant was diagnosed of suffering from Alzheimer's disease and Systemic Hypertension. It is recorded in the order dated 19.08.2024 that the applicant was referred to Gauhati Medical College & Hospital, Guwahati for re-checkup on 17.07.2024 and again on 24.07.2024, which was done at the Neurology OPD, Gauhati Medical College & Hospital, Guwahati.

6. The learned APP has produced a copy of report from the Superintendent of District Jail, Morigaon and the original of the said report is also brought on record by the Registry, which is forwarding letter dated 09.09.2024, by which the medical report of the applicant, namely, Brajeswar Bordoloi is forwarded.

7. The relevant part of the report by the Professor, Department of Neurology, Gauhati Medical College & Hospital, Guwahati extracted below:

“.....

Patient attended Neurology OPD on 17/07/2024, 08/08/2024 and 05/09/2024

O/E

Patient is conscious

BP – 110/60 mm Hg, PR – 74/min

MMSE – 16/30

Extra ocular movements – Full

Left UMN facial palsy+

Left homonymous hemianopia+

	<i>Right</i>	<i>Left</i>
<i>Tone</i>	<i>N</i>	<i>Spasticity+</i>
<i>Power-</i>	<i>Upper limb – 5/5</i>	<i>4+/5</i>
	<i>Lower limb – 5/5</i>	<i>4+/5</i>
<i>Handgrip</i>	<i>100%</i>	<i>95%</i>
<i>DTR</i>	<i>Upper limb - ++</i>	<i>++</i>
	<i>Lower limb - +</i>	<i>+</i>
<i>Plantar</i>	<i>Flexor</i>	<i>Flexor</i>
<i>Sensation</i>	<i>N</i>	<i>N</i>

NCCT Brain – Area of Hypodensity in involving Right Occipital lobe – Suggestive of Ischemic etiology

Multiple lacunar infarcts in Bilateral corona radiata and capsulo ganglionic region. (01/07/2024)

Diagnosis – Dementia under evaluation-? Multi-Infarct Dementia

Left Hemiparesis due to Ischemic stroke

Past h/o Cerebrovascular Accident (Stroke) in August' 2023

Systemic Hypertension."

8. Accordingly, in view of the report of the Gauhati Medical College & Hospital, Guwahati suggesting that the applicant is suffering from left UMN facial palsy+ and left homonymous hemianopia+, which are suggestive of loss of vision in the left eye, the Court is of the considered opinion that the medical condition of the applicant would entitle him for bail.

9. Accordingly, the Court is inclined to provide that on providing a bail bond of Rs.25,000/- with one solvent surety of like amount to the satisfaction of learned Sessions Judge, Morigaon, the applicant, namely, Brajeswar Bordoloi shall be released on bail on the following conditions:

a. The applicant shall physically be produced before the

Superintendent of District Jail, Morigaon once in every month preferably within 12 to 15 of each month, starting from the present month of September, 2024.

b. The applicant shall not make any attempt to meet the victim or any of his/her family members.

c. During the period when the applicant is on bail, he shall not leave the territorial jurisdiction of Morigaon without prior written information to the Superintendent of District Jail, Morigaon.

d. The applicant shall also submit an undertaking before the Superintendent of District Jail, Morigaon that he would surrender before the said authority as and when directed by this Court.

10. It is made clear that in the event the applicant is not produced before the Superintendent of District Jail, Morigaon within the time as allowed, it would be open to the said authority to take steps for taking the applicant into custody.

11. As a condition of grant of bail, it is provided that when the matter is listed for hearing, the learned counsel for the applicant/appellant shall not pray for adjournment.

12. This interlocutory application stands allowed.

JUDGE

JUDGE

Comparing Assistant