

GAHC010129872023



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

Case No. : I.A.(CrI.)/531/2023

SAIRAT ALI
S/O MD. MOHAR ALI RESIDENT OF VILLAGE NO. 2, JOYNAGAR PO AND PS
DHEKIAJULI, DIST SONITPUR, ASSAM 784110

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:SMTI NIVA PAUL
W/O AMAR PAUL
RESIDENT OF VILLAGE ALISINGA

PO ALISINGA S.O
PS DHEKIAJULI
DIST SONITPUR ASSAM 78411

Advocate for the Petitioner : MR. M K HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 09.02.2024

Heard Mr. A.K. Ahmed, learned counsel for the applicant. Also heard
Mr. B.B. Gogoi, learned Additional Public Prosecutor.

2. This application under Section 389 of the Code of Criminal Procedure, 1973 has been filed by the applicant, namely, Sairat Ali, praying for suspension of the sentence imposed on him by the judgment and order dated 02.06.2023, passed in Sessions Case no.16/2020 by the learned Additional Sessions Judge (FTC), Sonitpur, Tezpur. By the said judgment, which has been impugned in the connected appeal, which is registered as Criminal Appeal No. 222/2023, the applicant has been convicted under Section 376 read with Section 511 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for 5 (five) years and to pay a fine of Rs.10,000/- (Rupees ten thousand only) and in default of payment of fine, to undergo further rigorous imprisonment for 6 (six) months. The applicant has also prayed for allowing him to go on bail during the pendency of the connected appeal.

3. The facts relevant for consideration of the instant application is that on 26.09.2017, the husband of the victim had lodged an FIR before the Officer-in-Charge of Dhekiajuli Police Station, inter alia, alleging that on 25.09.2017 at about 8.30 PM, some local people saw the wife of the informant and the present applicant committing an illicit act in an empty room on the backside of the pharmacy of the present applicant at Alisingha Chowk and when the local people tried to apprehend them, the wife of the informant flee away from the place and the applicant was caught by the local people.

4. On receipt of the FIR, Dhekiajuli P.S. Case No. 840/2017 under Section 376/498 IPC was registered and investigation was initiated. Ultimately, on completion of the investigation, charge-sheet was laid against the present applicant. During the trial, the applicant was on bail and he faced trial remaining on bail. The charge under Section 376 IPC was framed against the present applicant, to which he pleaded not guilty and claimed to be tried. The

prosecution side examined 8 (eight) witnesses during the trial and the present applicant, who was also examined under Section 313 Cr.P.C., pleaded his innocence and denied the truthfulness of the testimony of the prosecution witnesses. However, he declined to adduce any evidence in defence. Ultimately, by the judgment which has been impugned in the connected appeal, the applicant had been convicted and sentenced in the manner as already described hereinabove.

5. Learned counsel for the applicant has submitted that on perusal of the FIR, it would show that if any act has happened between the victim and the wife of the informant, it was consensual in nature. The learned counsel for the applicant has also submitted that there are contradictions in the testimony of the prosecution witnesses and there is every possibility that the connected appeal, which has been preferred by the present applicant may be decided in his favour. It is also submitted by the learned counsel for the applicant that the applicant has been sentenced to a short imprisonment of 5 (five) years only and in case of such short imprisonment, it is a normal rule that when appeal is pending, the sentence should be suspended and the rejection of the prayer for suspension is only by way of an exception.

6. In support of his submission, the learned counsel for the applicant has cited a ruling of the Supreme Court of India in the case of *Kiran Kumar Vs. State of M.P.*, reported in (2001) 9 SCC 211.

7. The learned Additional Public Prosecutor has fairly submitted that there appears to be some contradictions in the testimony of the victim as she had stated before the investigating officer in her statement recorded under Section 161 Cr.P.C. that she was raped by the present applicant, however, she has stated differently in her statement which was recorded under Section 164

Cr.P.C. as well as when she deposed before the Court as P.W.-1.

8. I have considered the submissions made by the learned counsel for the parties and have perused the material on record. The Supreme Court of India in the case of *Kiran Kumar Vs. State of M.P. (supra)* has observed as follows:

“(3) This Court has held in Bhagwan Rama Shinde Gosai v. State of Gujarat [(1999) 4 SCC 421] that when a person is convicted and sentenced to a short-term imprisonment the normal rule is that when his appeal is pending the sentence should be suspended and rejection is only by way of exception and be put forward for such rejection. In such case also every endeavour should be made to have the appeal posted for early hearing and disposal. If the short-term sentence is allowed to run out during the pendency of the appeal the appeal itself will become, for all practical purposes, infructuous so far as the appellant is concerned. It does not mean that the appellate Court should suspend the sentence, if its consequence would be danger to the society or any other similar difficulties.”

9. Considering the submissions made by the learned counsel for the applicant, at this stage it cannot be ruled out that the connected appeal would not be decided in his favour. As the sentence imposed on the present applicant for a short period and there is unlikelihood of hearing the main appeal at the earliest due to the pendency of the large number of criminal appeals in this Court, in the event, if the applicant is ultimately found to be innocent in the connected criminal appeal, he would certainly suffer prejudice if the execution of sentence is not suspended during the pendency of the connected appeal.

10. In view of above, this Court is of considered opinion that during pendency of the connected criminal appeal no. 222/2023, the execution of the sentence imposed on the present applicant is required to be suspended, which

this Court hereby orders.

11. The applicant is also go on bail of Rs.30,000/- with one surety of like amount subject to the satisfaction of learned Additional Sessions Judge (FTC), Sonitpur, Tezpur in connection with Sessions Case no.16/2020 during the pendency of the connected criminal appeal no. 222/2023.

12. With the above observations, this interlocutory application is hereby disposed of.

JUDGE

Comparing Assistant