

GAHC010131472024



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

Case No. : I.A.(CrI.)/612/2024

MONSER ALI
S/O LATE HASHEM ALI,
R/O NO. 3, BAGHMARA CHAR,
P.O.- BAGHMARA,
P.S.- ALOPATI CHAR,
DIST.- BARPETA, ASSAM.

VERSUS

THE STATE OF ASSAM,
REP BY THE PP ASSAM

Advocate for the Petitioner : MR F HAQUE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 15-07-2024

- 1.** Heard Mr. F. Haque, learned counsel for the applicant. Also heard Mr. B. Sarma, learned Additional Public Prosecutor for the State.
- 2.** This application under Section 389 of the Code of Criminal Procedure,

1973 has been filed by the applicant, namely, *Monser Ali* who praying for suspension of the execution of sentence passed in the judgment and order dated 01.03.2023 passed by the learned Special Judge, Goalpara in Special (NDPS) Case No. 14 of 2022, whereby the present applicant was sentenced to undergo rigorous imprisonment for 10(ten) years and to pay a fine of Rs.1,00,000/- (Rupees One Lakh) for the offence under Section 22(c) of the NDPS Act, 1985 with default stipulation of rigorous imprisonment for a term of 3(three) years in the event of failure to pay the imposed fine.

3. The learned Additional public prosecutor has pointed out that the present applicant has earlier also referred an application under Section 389 of the Code of Criminal Procedure, 1973, in the connected appeal i.e., Criminal Appeal No. 130/2023 which was rejected by this Court by order dated 21.11.2023.

4. The learner counsel for the applicant has submitted that the present applicant has been detained behind the bars since 29.03.2022 and he has a four years old child and who was born while he was detained behind the bars and to meet his child, it is prayed that he may be granted at least 15 days interim bail in terms of bail in this case. It is also submitted that his family is suffering due to flood.

5. Learned counsel for the applicant has also submitted that the applicant was the driver of the vehicle and he was not in conscious possession of the contraband which was seized in the case.

6. On the other hand, learned Additional Public Prosecutor has submitted that the plea taken by the learned counsel for the applicant on merit was earlier

considered by this Court while considering Interlocutory Application No. 498/2023 and after due consideration of the pleas, the prayer for suspension of sentence was rejected.

7. As regards the other pleas taken by the learned counsel for the applicant, the learned Additional Public Prosecutor submits that as the present case involves commercial quantity of contraband, hence it may not be appropriate to suspend the sentence imposed on the applicant at this stage, more so, when his earlier application for suspension of sentence was rejected.

8. I have considered the submissions made by the learned counsel for the rival parties and have perused the materials available on record.

9. It appears that after due consideration of the submissions of the learned counsel for the applicant, the earlier application under Section 389 of the Code of Criminal Procedure, 1973 filed by the present applicant was rejected as this Court found nothing varying or apparent on the face of record which may *prima facie* lead to the satisfaction that the conviction of the appellant may not be sustained while rejecting his earlier application for suspension of sentence. The petitioner has not made out any different case and the plea raised by the learned counsel for the applicant were considered while rejecting his earlier application also and the new pleas taken by the learned counsel for the applicant, in the considered opinion of this Court, does not justify suspension of the sentence of the present applicant considering the fact that *prima facie* there is nothing on record at this stage which would lead this Court to an opinion that the sentence imposed on the applicant may not be sustained. Hence, as the quantity of contraband seized in this case was commercial quantity, Section 37 of the NDPS Act, 1985 is applicable even in the case of an application under

Section 389 of the Code of Criminal Procedure, 1973.

10. For reasons discussed hereinbefore, this application for suspension of sentence of the applicant is rejected.

11. The applicant may, however, be at liberty to make a separate prayer for out of turn listing and expeditiously hearing of the connected appeal.

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

JUDGE

Comparing Assistant