

GAHC010133612024



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

Case No. : I.A.(CrI.)/630/2024

ALAL UDDIN,
S/O MD. ABDUL KADER,
VILL.- LAODUNG, P.O. AND P.S.- UDALGURI, DIST.- UDALGURI, ASSAM,
PIN- 784509.

VERSUS

THE STATE OF ASSAM. AND ANR
REP. BY P.P., ASSAM.

Advocate for the Petitioner : MR. B BARUAH,

Advocate for the Respondent : PP, ASSAM,

Linked Case : CrI.A./143/2024

ALAL UDDIN
S/O MD. ABDUL KADER

VILL.- LAODUNG
P.O. AND P.S.- UDALGURI
DIST.- UDALGURI
ASSAM
PIN- 784509.

VERSUS

THE STATE OF ASSAM.
REP. BY P.P.
ASSAM.

Advocate for : MR. B BARUAH
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM.

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 06.11.2024

Heard Mr. B. Baruah, learned counsel for the applicant. Also heard Mr. D.P. Goswami, learned Public Prosecutor for the State/respondent No.1.

2. This is an application under Section 389 (1) & (2) of Cr.P.C. praying for suspension of sentence against the judgment and order dated 19.04.2024 passed by the learned Sessions Judge, Udalguri in Sessions Case No. (II) 15/2018, wherein the applicant was convicted under Section 304(B) of IPC and sentenced him to undergo r/i for seven years and to pay a fine of Rs.10,000/- in default further imprisonment for two months.

3. It is submitted by the learned counsel for the applicant that the applicant was not present when the incident took place. As per FSL report, the wife of the applicant i.e. the victim died due to consuming poison. It is further submitted that the other witnesses of the prosecution stated that the applicant was not present in his house at the time of incident. As such, the applicant may be released on bail during pendency of the appeal. In support of his submission, the learned counsel for the petitioner has placed reliance on the following case laws-

(i) Jahar Ali Sheikh @ Jahar Ali S.K. and Ors. vs.
The State of Assam and Anr. in I.A.(Crl.)/264/2024.

(ii) Kiran Kumar vs. State of M.P., reported in (2000) 41 ACrC 884.

4. On the other hand, the learned Additional Public Prosecutor submits that there are two sets of evidence in the record. The evidence of the relatives of the victim stated that since the marriage between the applicant and the victim, the applicant used to torture her both physically and mentally due to demand of dowry articles. The other set of evidence of the witnesses of applicant stated that the applicant was not present at the time of incident and their relation was cordial. It is also pointed out that as per post-mortem report, some injuries are noticed in the body of the victim. Hence, he has prayed for dismissal of the bail application during pendency of the appeal.

5. It appears from the record that charge sheet has been laid under Section 302/304B IPC and charge was also framed under the said Sections of law but the applicant was convicted under section 304B IPC. However, without expressing any opinion on the merit of the case, at this stage, this Court is not inclined to grant bail to the applicant during pendency of the appeal. Hence, the prayer of the applicant is rejected.

6. With the above direction, the I/A stands disposed of.

JUDGE

Comparing Assistant