

GAHC010151382022



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

Case No. : I.A.(Crl.)/416/2022

BABU @ BABU SHEIKH @ HAZARAT ALI AND 2 ORS
S/O- ABDUL SHEIKH
R/O- VILL.- HAZARI JHARNA
P.O. AND P.S. GAURIPUR
DIST. DHUBRI
ASSAM

2: FAKIR CHAND @ FAKIR
S/O- ABDUL SHEIKH
R/O- VILL.- HAZARI JHARNA
P.O. AND P.S. GAURIPUR
DIST. DHUBRI
ASSAM

3: IBRAHIM ALI
S/O- LATE KASHEM ALI
R/O- VILL.- ALOMGANJ PART-9
P.O. AND P.S. GAURIPUR
DIST. DHUBRI
ASSAM
VERSUS

THE STATE OF ASSAM AND ANR
TO BE REPRESENTED BY THE LEARNED PUBLIC PROSECUTOR
ASSAM

2:SARKAR UNUSH MANDAL
S/O- LATE MONSER MUNSHI
R/O- VILL.- HAZARI JHARNA
P.O. AND P.S. GAURIPUR
DIST. DHUBRI
ASSAM

Advocate for : MR SARFRAZ NAWAZ

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

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 06.03.2024

[Manish Choudhury, J.]

Heard Mr. S. Nawaz, learned counsel for the applicants-appellants; Ms. N. Das, learned Additional Public Prosecutor for the respondent no. 1, State of Assam; and Mr. R. Islam, learned counsel for the opposite party no. 2-informant.

2. The instant application has been preferred by the applicants seeking suspension of the sentence the applicants are presently undergoing pursuant to a judgment and order dated 31.05.2022 of conviction and sentence passed by the learned court of Additional Sessions Judge, Dhubri in Sessions Case no. 41/2022. The applicants as the appellants, have assailed the judgment and order in the connected the criminal appeal, CrI. A. no. 173/2022. The applicants-appellants have *inter-alia* been undergoing sentence of life imprisonment pursuant to their conviction under Section 302 of Indian Penal Code [IPC].

3. By the judgment and order impugned in the connected appeal, 4 [four] accused persons viz. [1] Babu @ Hazarat Ali [the applicant-appellant no. 1]; [2] Fakir Chand @ Fakir [the applicant-appellant no. 2]; [3] Ibrahim Ali [the applicant-appellant no. 3]; and [4] Nasiruddin Seikh; have been convicted for the offences under Sections 148/149 of the Indian Penal Code [IPC] as well as for the offences under Sections 302/149, IPC. For the offences under Sections 148/149, IPC, all the accused persons including the applicants-appellants, have been sentenced to undergo rigorous imprisonment for a term of 3 [three] years with a fine of Rs. 2,000/- each with default stipulation. For the offence under Section 302, IPC, all the accused persons including the applicants-appellants, have been sentenced to undergo life imprisonment.

4. The investigation was initiated on the basis of a First Information Report [FIR] lodged by one Sarkar Unush Mondal [P.W.3]. As per the FIR, the informant's nephew Jashim Mondal was attacked on a village road at about 6-30 a.m. on 30.06.1998. At that time, Jashim Mondal was going towards Alomganj Bazar and all on a sudden, the accused-persons named in the FIR, 6 [six] in nos. including the applicants-appellants, intercepted Jashim Mondal in front of the house of a co-villager. It was alleged that in the FIR that the accused persons injured Jashim Mondal grievously by stabbing in his abdomen with *dagger*. As a result, Jashim Mondal died on the spot.

5. Mr. Nawaz, learned counsel for the applicants-appellants has drawn attention to the testimonies of P.W.2, P.W.6 & P.W.7 to contend that the presence of the other witnesses like P.W.3, P.W.4 & P.W.5 at the place of incident was doubtful. According to him, P.W.3 was called by P.W.4 after the incident had occurred and as such, P.W.3 who was also the informant, was a post-incident witness.

6. On the other hand, Ms. Das, learned Additional Public Prosecutor has, on the other hand, referred to the Post-Mortem Examination [PME] Report which had reported that the deceased sustained multiple penetrating wounds on the abdominal part and the injuries reported in the PME report are consistent with the deposition of the informant, who was examined as P.W.3. Ms. Das has also contended that from the depositions of P.W.2 to P.W.7, it does not go to indicate that the P.W.3, P.W.4 & P.W.5 were not present at the place of incident at the relevant time. Ms. Das has further contended that the deposition of P.W.3 is not inconsistent with the version given in the FIR.

7. We are gone through the materials on record including the depositions of the witnesses and the PME Report for the purpose of consideration of the prayer for suspension of the sentence. It is *prima facie* found that the informant-P.W.3 in his evidence had stated about presence of all the 4 [four] accused persons, who faced the trial. From the depositions of witnesses, *prima facie* it has further emerged that the accused persons were not unknown to the witnesses as they belong to the same village. Having regard to the nature of accusations made against the accused persons, the manner of commission of crime; the

gravity of the offence; and the desirability or otherwise of releasing the convicted accused persons on bail, this Court is of the *prima facie* view that this is not a fit case for exercising the power under Section 389, CrPC for suspension of sentence. In such view of the matter, the instant application stands rejected.

JUDGE

JUDGE

Comparing Assistant