

GAHC010157562023



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

I.A.(CrI.)/606/2023

LAL CHAN ALI @ LALCHNAD ALI AND 2 ORS.
S/O LATE SHAMSUL HOQUE RESIDENT OF VILLAGE LALIAPARA
PS CHAPAR
DIST DHUBRI
ASSAM

2: WAHAB ALI @ ABDUL WAHAB
S/O LATE ROSTAM ALI

RESIDENT OF VILLAGE FALIMARI PART I
PO AND PS CHAPAR
DIST DHUBRI
ASSAM

3: JAMAL UDDIN
SON OF DOST MAMUD

RESIDENT OF VILLAGE LALIAPARA
PS CHAPAR
DIST DHUBRI
ASSAM
VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:MAHAR ALI

S/O LATE SARAN ALI

RESIDENT OF KHARSHIMARI
PO NAYER ALGA

PS PANCHARATNA
DIST DHUBRI
ASSAM

Advocate for : MR H R A CHOUDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 12.01.2024
(*Malasri Nandi, J*)

Heard Mr. H.R.A.Choudhury, learned Senior Counsel for the applicants and Mr.K.Bhaishya, learned Additional Public Prosecutor for the respondent State of Assam.

2. The applicants have preferred an application under Section 389 of CrPC for suspension of sentence and to release the applicants on bail during the pendency of the appeal.
3. The applicant was convicted in Sessions Case No. 168/2012, vide judgment dated 28.06.2023 by the learned Additional Sessions Judge, Bilasipara, convicting the applicant under Sections 147/148/149/302/201 of the IPC and sentencing them to undergo simple imprisonment for one year each under Section 147 IPC, 2 years each under Section 148 IPC and also sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.10,000/- each, in default, simple imprisonment for two months each under Section 302/149 IPC. The applicants were also sentenced to undergo simple imprisonment for two years each under Sections 201/149 IPC and to pay a fine of Rs.4000/- each in default to undergo simple imprisonment for one month each.
4. The learned senior counsel for the applicants submits that the impugned conviction and sentence passed by the learned trial court is not sustainable in law, inasmuch as, the learned trial court grossly erred in appreciating the evidence on record properly. The witnesses had made omnibus statements before the learned trial court regarding involvement of some accused persons. There is no specific allegations against the present applicants i.e.

Lal Chan Ali @ Lalchand Ali, Wahab Ali @ Abdul Wahab and Jamal Uddin to be the perpetrators of crime.

5. It is also submitted that the defence side raised serious objection regarding identification of dead bodies as there was a riot between Santhal and Bodos at the relevant time of incident. The bodies which were allegedly recovered may be the victims of riots. According to the learned counsel for the applicants, the two eye witnesses projected by the prosecution i.e. PW-5 and PW-6 were brought before the trial court while they were languishing in jail in connection with the murder of one of the accused person. As such, there is every possibility to implicate the accused applicants to be involved in the present case. On the basis of omnibus statements of the prosecution witnesses, the applicants cannot be convicted for life with the aid of Section 149 of the IPC.

6. It is further submitted that there is every chance of success in the appeal and as such, in the interest of justice, they may be released on bail.

7. In response, learned Additional P.P. has opposed the granting of bail to the applicants and suspending the sentence pending appeal. According to the learned Addl.P.P., the assault on the deceased Jahar Ali was witnessed by PW-5, PW-6, PW-11, PW-12 and PW-15, who stated that upon hearing hue and cry, when they came out, they saw Jahir Ali running and all the accused persons including the applicants followed him and further saw that the accused persons caught hold of him and assaulted him with sharp weapon and as a result of which, the victim died instantaneously.

8. It is also submitted by the learned Additional P.P. that PW-15, on the date of incident also went to the market at the relevant time and he was accosted by the accused persons. He stated before the trial court that when the accused persons told him and others to stop, he ran and at that point of time, he saw applicant No. 3 Jamal Uddin hitting Sahar Ali with a sharp cutting weapon and being beaten up by all other accused persons. According to PW-15, he had seen other accused persons assaulting Jahar Ali, who tried to run away, killing him on the spot. This witness also stated that he somehow escaped and informed others.

9. Learned Additional P.P. also pointed out that the doctor who conducted autopsy on the dead body of the deceased Sahar Ali found multiple stab injuries on his abdomen as well as

cut injuries in his neck muscles and bones upto to the vertebra. The doctor who conducted autopsy on the body of the other deceased Jahar Ali also found deep cut injuries on various parts of his neck, chest and abdomen. According to learned Addl.P.P., as there is sufficient materials against the present applicants, as the doctor had also corroborated the evidence of the witnesses in respect of the injuries caused to the deceased, the benefit of suspension of sentence pending appeal may not be granted to the present applicants.

10. We have considered the submission of the learned counsels for the parties. We have also gone through the records.

11. Though the learned counsel for the applicants has submitted that there are lots of contradictions in the statements of witnesses regarding the involvement of the appellant/applicant, in our view, those considerations will be taken up at the time of final hearing of the appeal. It is an undisputed fact that due to the alleged incident, two persons died due to the injuries sustained by them on the date of incident. It is also not in dispute that all the accused persons were present at the scene of occurrence when the incident occurred. It is true that the witnesses have not specifically stated the part played by the applicants individually in the alleged offence. However, it is a settled position of law that in heinous crimes like murder, sexual offence etc., proper application of mind to the relevant factors and recording of reasons germane to justify grant of bail by the court is essential. We have also gone through the detailed reasons assigned by the trial court while convicting the accused applicants in the heinous crime of murder of two persons.

12. In view of the above, without discussing the evidence in detail and on merits of the case, at this stage , we do not find it appropriate to release the applicants on bail by suspending the sentence during the pendency of the appeal.

13. Accordingly the prayers of the applicant are rejected.

The interlocutory application stands disposed of.

JUDGE

JUDGE

Comparing Assistant