

GAHC010158152024



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

I.A.(Crl.)/745/2024

MAHADEV DUTTA
S/O LATE GOBINDA DUTTA
R/O TOKRERCHARA PART- IV
P.S.- GOLAKGANJ
DIST.- DHUBRI
ASSAM.

VERSUS

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

2:TINA GHOSH
W/O CHANDAN GHOSH

R/O SOUTH TOKRERCHARA PART- IV
P.S.- GOLAKGANJ
DIST.- DHUBRI
ASSAM
PIN- 783334.

Advocate for : MR. A CHAUDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

In Case No. : Crl.A./254/2024

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S/O LATE GOBINDA DUTTA,
R/O TOKRERCHARA PART- IV, P.S.- GOLAKGANJ, DIST.- DHUBRI, ASSAM.

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ASSAM
PIN- 783334

Advocate for the Petitioner : MR. A CHAUDHURY, MR. D BORA,MR. N MAHAJAN,MR.
P K DAS

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

Date : 16.08.2024

Heard Mr. B.K. Mahajan, the learned counsel appearing for the applicant as well as Mr. D. Das, the learned Additional P.P. for the State of Assam/respondent No. 1.

2. This is an application under Section 430 (3) of BNSS, 2023 praying for suspension of conviction and sentence awarded in the judgment dated 29.06.2024 passed by the learned Sessions Judge, Dhubri in Sessions Case No. 186/2018.

3. Mr. Das has objected to the prayer of suspension.

4. The applicant was convicted under Sections 326/307 of the Indian Penal Code and he

was sentenced to undergo rigorous imprisonment for the offence u/s 307 of the Indian Penal Code.

5. Mr. Mahajan has submitted that there are two injured persons (PW - 2 and PW- 3)). According to Mr. Mahajan, the PW-3 does not have any medical report pertaining to his injuries. Mr. Mahajan has pointed out that the statement of the PW-3 recorded u/s 161 of the Cr.P.C. was recorded after 1 year 8 months 24 days from the date of the judgment.

6. I have gone through the evidence available in the case record.

7. It is a settled position of law that when a person is convicted for a fixed period of sentence and while he files an appeal under any statutory right, suspension of conviction can be considered by the appellate court liberally unless there are exceptional circumstances.

8. In support of his submission, Mr. Mahajan has relied upon a judgment of the Supreme Court that was delivered in **(1999) 4 SCC 421** reported in **Bhagwan Rama Shinde Gosai and Ors -Vs.- State of Gujarat..**

8. Mr. Mahajan has also relied upon another judgment of Supreme Court that was delivered in **Ganesh Bhavan Patel & Anr. -Vs.- State of Maharashtra reported in (1978) 4 SCC 371.**

9. After considering the submissions made by the learned counsels of both sides, the prayer of the applicant/appellant is allowed. The judgment dated 29.06.2024 passed by the learned Sessions Judge, Dhubri in Sessions Case No. 186/2018 is stayed till disposal of the appeal.

10. The appellant Mahadev Dutta is allowed to go on bail of Rs. 25,000/- with a surety of like amount to the satisfaction of the learned Sessions Judge, Dhubri.

11. The interlocutory application stands disposed of.

JUDGE

Comparing Assistant