

GAHC010169612023



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

Case No. : I.A.(CrI.)/672/2023

AMINUL HOQUE
S/O LATE JUBBAR ALI, VILL.- BHALUKI, P.O.- BALARBHITA, P.S.- BARPETA
ROAD, DIST.- BARPETA, ASSAM.

VERSUS

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

2:ABDUL HAMID
S/O LATE ABDUL JALIL
VILL.- BHALUKI
P.O.- BALARBHITA
P.S.- BARPETA ROAD
DIST.- BARPETA
ASSAM
PIN- 781315

Advocate for the Petitioner : MR. R ALI
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

18.01.2024

Heard Mr. R. Ali, learned counsel for the applicant/appellant, Aminul Hoque as well as Mr. G. P. Goswami, learned Addl. P.P., Assam appearing for

the State respondent No. 1.

This interlocutory application is filed under Section 389 Cr.P.C., with prayer for bail and suspension of the judgment and order of conviction and sentence dated 11.07.2023 passed by the learned Additional Sessions Judge, FTC, Barpeta in Sessions Case No.211/2021 convicting the appellant under Section 451/376/511 of the IPC and sentencing him to undergo rigorous imprisonment for 7(seven) years and to pay fine of Rs.10,000/- with default stipulation under Section 376/511 IPC and rigorous imprisonment for 2(two) years and to pay fine of Rs.5000/- with default stipulation under Section 451 IPC.

It is submitted on behalf of the applicant that there is every possibility that the applicant may be acquitted from the charges under Section 376/511 and 451 IPC in connection with this appeal. It is admitted that the applicant had a love relationship with the victim prior to her marriage and a false case has been slammed against the applicant and the applicant is prejudiced by the judgment and order impugned by him.

Mr. M. P. Goswami, learned Additional Public Prosecutor has submitted that the learned trial court has passed an appropriate order of conviction and sentence. The evidence of the witnesses clearly depicts that the applicant entered into the house and committed house trespass at night and thereafter made an attempt to commit rape on the victim.

Learned counsel for the applicant has controverted his submission stating that the evidence of the witnesses are not corroborating. The victim has not alleged that the applicant has committed rape whereas one of the witnesses has submitted that the applicant has committed rape.

I have considered the submissions at the bar. I have also scrutinized

the evidence. The appeal is pending for hearing. The merits of the appeal are not brought to the fore.

Considering the submissions at the bar and also in view of my foregoing discussion, the judgment and order of conviction and sentence dated 11.07.2023 passed by the learned Additional Sessions Judge, FTC, Barpeta in Sessions Case No.211/2021 is hereby stayed until further order. The applicant/accused is also enlarged on bail of **Rs.50,000/- (Rupees Fifty Thousand)** with a suitable surety of like amount to the satisfaction of the learned trial court. The learned trial court may impose condition which the court may deem fit proper.

With the above directions, the Interlocutory Application stands disposed of.

JUDGE

Comparing Assistant