

GAHC010178762024



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

Case No. : I.A.(CrI.)/875/2024

ANSAR ALI
S/O MD. MAHABBAT ALI, R/O VILL.-PATHUAKATA, P.S.-MIKIRBHETA,
DIST.-MORIGAON, ASSAM, PIN-782001.

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:FAIJUL HOQUE
S/O LATE IUSUF ALI
R/O VILL- PATHUAKATA
P.S.-MIKIRBHETA
DIST- MORIGAON
ASSAM-78200

Advocate for the Petitioner : MR D K BHATTACHARYYA, A GAUTAM

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 23-09-2024

1. Heard Mr. A. Gautam, the learned counsel for the applicant and also heard

Ms. S. Jahan, learned Addl. PP for the State respondent.

2. This is an application filed under Section 430(2), read with Section 442(1) of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 corresponding to Section 389(2), read with Section 401(1), of the Code of Criminal Procedure, 1973, for suspension of conviction and sentence and release of applicant on bail.

3. It is submitted by Mr. Gautam that vide judgment and order dated 12.07.2023 passed by learned Sessions Judge, Morigaon in Criminal Appeal No. 38 of 2017, affirmed the order and sentence, dated 25.10.2017, passed by the learned Additional CJM, Morigaon in connection with G.R. Case No. 1524 of 2017, whereby the present applicant was convicted u/s 457 IPC and 380 IPC read with Section 511 IPC and sentenced to undergo 3 years S.I. under Section 457 IPC and 2 years of S.I. u/s 380, read with Section 511 IPC.

4. It is submitted by Mr. Gautam that there are contradictory statement in the evidence of PWs and there is every chance to succeed in the connected criminal revision petition. It is also submitted that PW-1 & PW-5 claimed to be eye-witness in the prosecution case but on the perusal of the evidence it is seen that there are contradictory statement made by both the eye-witnesses. As per PW-1 he saw the accused entering into the shop of PW-2 for committing theft on the other hand as per PW-5 he heard the sound in the shop of one Faijiul Haque. He further submitted that the accused-petitioner is behind the bars for 458 days and considering his period of incarceration, the prayer may be considered. Further it is submitted that during the trial of the appeal before the learned Sessions Judge, the accused-appellant was on bail and he never jumped over any conditions of bail. Accordingly, it is prayed for suspension of sentence till the disposal of the connected revision petition and also prayed to release the

accused/appellant on bail.

5. Mr. Gautam further relied on the decision of ***Bhagwan Rama Shinde Gosai and Others vs. State of Gujarat***, reported in ***(1999) 4 SCC 421***. The para 3 of the judgment is quoted below:

“3. When a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course, if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of a limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when a motion for expeditions hearing of the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter of suspending the sentence, so as to make the appeal right meaningful and effective. Of course, appellate courts can impose similar conditions when bail is granted.”

6. In this context, Ms. S. Jahan, the learned Addl. PP submits that there are some contradiction between PW-1 and PW-5 but from the evidence on record it is seen that the accused-appellant was caught red handed while he was found entering in the shop of PW-2. Further she submitted that the accused-appellant was sentenced to undergo Simple Imprisonment for 3 years under Section 457 IPC and another 2 years of S.I. u/s 380, read with Section 511 IPC but there is no mention as to whether sentences to run concurrently or consecutively. In this context Ms. S. Jahan submitted that if there is no mention, it will be considered that the sentences to be run consecutively. However, she submitted these are the matters to be considered at the time of contemplating of the criminal revision petition.

7. Considering the submission made by the learned counsel for the appellant and the evidence on record and considering the other aspects of the case vis-a-vis the conduct of the petitioner and other aspect of the matter, the present petition is allowed the sentence imposed on the accused-appellant vide the judgment & order dated 12.07.2023 and 25.10.2017 passed by learned Additional Sessions Judge, Morigaon and learned Additional CJM respectively is hereby suspended till disposal of the connected Appeal.

8. Further the accused-petitioner Ansar Ali is hereby allowed to go on bail for Rs. 20,000/- with one surety of like amount to satisfaction of the learned Addl. CJM, Morigaon.

9. With the above observation, the Interlocutory Application stands disposed of.

JUDGE

Comparing Assistant