

GAHC010217852022



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

Case No. : I.A.(Crl.)/713/2022

PRANAB HATIBARUAH
S/O- ATUL HATIBARUAH, VILL- GOHAIN GAON, HATIBARUAH CHUK
UNDER TEOK POLICE STATION IN THE DISTRICT OF JORHAT, ASSAM.

VERSUS

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

Advocate for the Petitioner : MR D TALUKDAR

Advocate for the Respondent : MS. B. BHUYAN(ADDL.PP, ASSAM)

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

ORDER

09-01-2024
(Malasri Nandi, J)

Heard Mr. D Talukdar, learned counsel for the appellant/applicant. Also heard Ms. B Bhuyan, learned Additional Public Prosecutor, Assam.

2. The applicant has filed this application under Section 389(2) of the Cr.P.C. for suspension of sentence and to release the applicant on bail during the pendency of the connected appeal.

3. The applicant, Pranab Hatibaruah, was convicted by the learned Sessions Judge, Jorhat by the judgment and order of conviction dated 11.08.2022 under Sections 302/34 IPC and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.1000/-, in default of payment of fine, to undergo simple imprisonment for one month in connection with Sessions Case No. 172 (JJ) of 2018.

4. It is submitted by the learned counsel for the applicant that though the prosecution has projected PW-13, PW-15, PW-17 as eye witnesses to the incident, but there are contradictions in their statement regarding commission of the crime by the applicant. It is also submitted that from the evidence of PW-13, it reveals that all the three accused including the present applicant caught hold of the deceased and the applicant took away a wooden lathi from PW-13 and assaulted the deceased causing injury on his chest and stomach. But the learned counsel for the applicant pointed out that PW-13 did not disclose the fact before the Investigating Officer while his statement was recorded under Section 161 Cr.P.C. PW-18, the Investigating Officer also confirmed the aforesaid contradiction while deposing before the Court.

5. The learned counsel for the applicant also contended that another alleged

eye witness PW-15 stated that all the three accused persons snatched the wooden lathi from the hand of PW-13 and assaulted the driver of ape vehicle, but he had not seen who had assaulted the driver. Hence, PW-15, does not corroborate the version of PW-13. Moreover, PW-13 has not stated that PW-15 was also present along with him. As such, his evidence cannot be relied upon.

6. Learned counsel for the applicant also stated that during trial the applicant was all along on bail and has never misused the liberty that has been granted to him by the learned trial court. Learned counsel for the applicant also added that there is every likelihood of interference by this Court against the order of conviction passed by the learned trial court. Hence, the applicant may be allowed to go on bail during the pendency of the connected appeal.

7. Learned Additional Public Prosecutor, Assam on the other hand, has opposed in granting of bail to the applicant by suspending the sentence and submits that there is cogent and reliable evidence of the eye witnesses. There is also evidence of the injured witness and it is a settled position of law that the testimony of an injured witness is accorded a special status in law. Evidence of all the eye witnesses make it clear that the applicant along with two other accused were present on the spot, where the incident had occurred and committed the offence. Under such backdrop, the prayer of the applicant may be rejected.

8. We have considered the submissions of the learned counsel for the parties. We have also perused the statement of the witnesses.

9. Admittedly, there are eye witnesses to the incident out of whom one was injured in the alleged incident. It is true that there are some contradictions in the statement of the witnesses, but which cannot be taken into consideration in granting bail to the applicant under Section 389 Cr.P.C by suspending sentences. From the evidence of the witnesses, it is not in dispute that the applicant was present on the spot. Without further going into the evidence of the witnesses in detail as well as the merit of the case, we are not inclined to allow the application for bail under Section 389 Cr.P.C. for suspension of sentence during the pendency of the connected appeal.

10. Interlocutory application, accordingly, stands disposed of.

JUDGE

JUDGE

Comparing Assistant