

GAHC010157562023



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

I.A.(CrI.)/929/2023

IZZAT ALI @ EAJJAT ALI
S/O LATE FULMAHAMMAD SEIKH

R/O HALDHIAPARA
P.S.- CHAPAR
DIST.- DHUBRI (ASSAM).

VERSUS

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

2:MAHAR ALI
S/O LATE SARAN ALI

R/O KHARSHIMARI
P.O.- NAYER ALGA
P.S.- PANCHARATNA
DIST.- DHUBRI
ASSAM
PIN-

Advocate for : MR SARFRAZ NAWAZ
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. S.Das, learned counsel for the applicant and Ms. S.H. Borah, learned Additional Public Prosecutor for the respondent State of Assam.

2. The applicant has preferred an application under Section 389 of CrPC for suspension of sentence and to release the applicant 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 him to undergo simple imprisonment for one year under Section 147 IPC, 2 years under Section 148 IPC and also sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.10,000/-, in default, simple imprisonment for two months under Section 302/149 IPC. The applicant was also sentenced to undergo simple imprisonment for two years under Sections 201/149 IPC and to pay a fine of Rs.4000/- in default to undergo simple imprisonment for one month.

4. It is submitted by the learned counsel for the applicant that trial court came to the finding that PW-5, PW- 6, PW -11, PW -12 and PW- 15 were eye witnesses to the incident and thereby completely ignoring the omission and contradiction which were present in their depositions. It is further submitted that none of the witnesses had specifically stated that the present applicant is involved in the commission of murder of Jahar Ali and Sahar Ali. The only allegation against the present applicant is that one dagger was recovered from the applicant's house. It is also submitted that the learned trial court ignored the evidence of the defence witnesses which resulted in the conviction of the applicant.

5. The learned counsel for the applicant 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 applicant i.e. Izzat Ali @ Eajjat Ali to be the perpetrator of crime. On the basis of such omnibus statements of the prosecution witnesses, the applicant 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, he may be released on bail.

7. In response, learned Additional P.P. has opposed in granting bail to the applicant and suspending the sentence pending appeal. According to 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 he came out, he saw Jahar Ali running and all the accused persons including the applicant 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. 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 in his neck muscles and bones upto 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 applicant as well as the doctor who 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 applicant.

9. We have considered the submission of learned counsel for the parties. We have also gone through the records.

10. Though the learned counsel for the applicant has submitted that there are lots of contradictions in the statements of witnesses regarding involvement of the appellant applicants, but to our consideration, those facts would 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 applicant 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 applicant in the heinous crime of murder of two persons.

11. In view of the above, without discussing the evidence in details and merits of the case, at this stage, we do not find it appropriate to release the applicant on bail by suspending the sentence pending appeal.

12. Accordingly the prayer of the applicant is rejected.

The interlocutory application stands disposed of.

JUDGE

JUDGE

Comparing Assistant