

GAHC010213972023



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

Case No. : I.A.(CrI.)/949/2023

ALA UDDIN
S/O LATE AHMED ALI
VILL.- LHALAPAR
P.O.- SRIGOURI
P.S.- BADARPUR
DIST.- KARIMGANJ
ASSAM
INDIA
PIN- 788806.

VERSUS

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

2:ABDUL MATLIB
S/O LATE KHURSHID ALI

VILL.- ALEKHARGUL
P.O.- ANGLARBAZAR
P.S.- BADARPUR
DIST.- KARIMGANJ
ASSAM
PIN- 788806.

Advocate for : MR H R A CHOUDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

08.05.2024

(Suman Shyam, J)

Heard Mr. A. Ahmed, learned counsel for the applicant/ appellant. Also heard Ms. S. Jahan, learned Addl. P.P., Assam appearing for the State.

The applicant herein, along with two other co-accused persons, were convicted by the learned Sessions Judge, Karimganj by judgment and order dated 07.08.2023 passed in connection with Sessions Case No.63/2016 for committing offences under Sections 302/307/149/148 of the IPC read with Section 25(1-A) of the Arms Act and *inter-alia* sentenced to undergo rigorous imprisonment for life and also to pay fine with default stipulation. The applicant as appellant has assailed the judgment and order dated 07.08.2023 by filing Criminal Appeal No.374/2023 which is pending disposal before this Court. The applicant is in jail since 07.08.2023. As such, the present I.A. has been filed invoking the jurisdiction of this Court under Section 389(2) of the Cr.P.C. with a prayer to suspend the jail sentence of the applicant and also to release him on bail.

The State has filed objection opposing the prayer for grant of bail to the applicant.

Mr. Ahmed, learned counsel for the applicant has argued that there is no evidence available on record ascribing any specific role to his client leading to the death of the deceased or injury to any of the victims and the learned trial Court has also failed to record proper finding as regards the existence of "common object" of the unlawful assembly so as to convict the applicant with the assistance of Section 149 of the IPC. Contending that the learned court

below had failed to consider the materials on record which indicated that the gun shot leading to the death of the deceased was fired by the deceased/accused Diken Amse alias Diken Khasia in exercise of his right of self defence and that too, from a licensed fire-arm, Mr. Ahmed has argued that the impugned judgment and order of conviction is wholly unsustainable in the eyes of law. Arguing that there is a strong possibility that just like the other four co-accused, his client may also be acquitted after final hearing of the connected appeal, Mr. Ahmed has submitted that the present is a fit case where the applicant deserves to be released on bail during the pendency of the appeal. It is also the submission of Mr. Ahmed that his client will abide by any condition that may be imposed by the Court for his release on bail.

Ms. S. Jahan, learned Addl. P.P., Assam, on the other hand, has opposed the bail prayer by contending that there is evidence available on record to show that the applicant, along with his associates, were part of an unlawful assembly and that there were indiscriminate gunshot fired from multiple weapons not only leading to the death of the deceased but also causing serious injuries to as many as four other persons. Contending that the common object of the unlawful assembly leading to the death of the deceased Hussain Ahmed and injury to his companions have been properly established, she submits that there is no scope for releasing the applicant on bail during the pendency of the appeal.

We have considered the submissions made at the Bar and have also gone through the materials available on record.

It appears that the incident occurred on 09.09.2012 at around 11:30 A.M. when the informant and other co-sharers of the land went to the disputed land

for cleaning the jungles. At that time, the F.I.R. named accused persons had allegedly attacked them with firearms. It further appears that names of as many as 10 FIR named accused persons were included in the charge-sheet submitted by the police. However, during trial, as many as three accused persons had died as a result of which, the trial proceeded only against 7 accused persons. Eventually, the learned trial court had convicted the present applicant, viz., Ala Uddin along with two other accused persons viz., You Suchiang Khasia and Bijoy Amse under Sections 148/324/307/302/149 IPC read with Sections 25(1-A)/27(1) of the Arms Act and sentenced them, as noted above. However, four other accused persons were acquitted by the learned trial Court.

On examination of the materials available on record we *prima-facie* find that the evidence on record does not clearly ascribe any specific role to the applicant herein in committing the offence under Section 302 of I.P.C. It appears that the death of the deceased viz., Hussain Ahmed was the outcome of injury caused by a bullet which, according to the defence side, was fired from the licensed arm of deceased accused Diken Amse.

PW-11 i.e. the I.O. has also stated in his cross-examination that the complainant and his associates had become violent and had set the house of accused Diken Amse (since deceased) on fire, who then resorted to gunshot, in exercise of his right of self defence.

The learned trial Court has also observed that it was a case of indiscriminate firing by more than five persons by use of deadly weapons after forming an unlawful assembly. Whether such indiscriminate firing by an assembly of five persons by itself can be treated to be an act of the unlawful assembly in pursuance of a common object, for causing death or grievous

injuries to the deceased or other injured persons, is a matter which would call for deeper examination by the Court which will be possible only at the stage of final hearing of the appeal. However, Paper Book is not yet ready in the connected appeal. As such, hearing of the Criminal Appeal may take some time.

We have also taken note of the fact that based on the same set of evidence, four other accused persons, alleged to have been part of the unlawful assembly, have been acquitted by the learned court below. Under the circumstances, we are of the unhesitant opinion that the applicant has made out a strong *prima-facie* case for allowing him to be released on bail pending disposal of the connected appeal.

We, therefore, direct that the applicant, viz., Ala Uddin be released on bail on furnishing a bond of Rs.30,000/- with one local surety of like amount to the satisfaction of the learned Sessions Judge, Karimganj. It would, however, be open for the learned Sessions Judge, Karimganj to impose any other additional condition(s), as may be deemed fit and proper in the facts and circumstances of the case, for releasing the applicant on bail in terms of this order.

Before parting with the record, we make it clear that our observations made herein above are *prima-facie* in nature, made for the limited purpose of disposing of the I.A. and the same shall not have any bearing during the final hearing of the appeal.

With the above observation, the I.A. stands disposed of.

JUDGE

JUDGE