

GAHC010239152024



2024:GAU-AS:12084

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

Case No. : I.A.(Crl.)/1122/2024

RANJIT KALITA
S/O. LAKHADHAR KALITA, R/O. VILL. MAKALI, P/S. CHHAYGAON, DIST.
KAMRUP, ASSAM, PIN-781124.

VERSUS

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

2:PANKAJ DAS
S/O. SABIN DAS
R/O. VILL.- BIHDIA
P/S. CHHAYGAON
DIST. KAMRUP
ASSAM
PIN-781124

Advocate for the Petitioner : MS. R KALITA, MS. C BARMAN

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 02.12.2024

Heard Ms. R. Kalita, learned counsel for the applicant. Also heard Mr. R. J. Kalita, learned Additional Public Prosecutor for the State respondent No. 1.

2. This is an application under Section 430(1) of BNSS, 2023 praying for suspension of sentence and also to release the accused/applicant on bail, who has been convicted under Section 304(Part-II)/34 IPC and sentenced to undergo Rigorous Imprisonment for 4 (four) years and also sentenced to pay a fine of Rs. 10,000/- in default to undergo Simple Imprisonment for another 3 (three) months vide judgment and order dated 05.11.2024, passed by the learned District and Sessions Judge, Kamrup, Amingaon in Sessions Case No. 57/2016, arising out of Chhaygaon P.S. Case No. 195/2015.

3. It is submitted by Mr. Baruah, learned Additional Public Prosecutor, that though the LCR was called for in the connected appeal, being CrI. A. No. 388/2024, but the same has not been received. However, the certified copy of the evidence of the witnesses are already been furnished.

4. Ms. Kalita, learned counsel for the applicant, submitted in this regard that 30 (thirty) numbers of witnesses are already being examined by the prosecution, but out of that, only 2 (two) witness, i.e. P.Ws.- 3 & 4, are the eye witness of the prosecution case and on the basis of whose testimony the order

of conviction was passed. She further submitted that there are lots of contradictions in the evidence of P.Ws.- 3 & 4, but in spite of that, the order of conviction was passed by the learned Trial Court below. She further submitted that the incident took place in a Bihu function where 3,000/4,000 peoples were gathered, which also reveals from the evidence of PWs- 3 & 4. She also submitted that the evidence of the eye witnesses are also contradicted in regards to the identification of accused person and they are also not aware about the presence of the other witnesses at the time when the incident had happened. It is not believable that there will be no eye witness except PWs- 3 & 4 when the entire incident had happened in a Bihu function. More particularly, she also submitted that in the evidence of the M.O., it is also seen that there was no injury found on the body of the deceased, except the brain hemorrhage which may also occurred by falling from a distant height. Accordingly, she submitted that during the entire period of trial, the accused/applicant was on bail and he never jumped over any condition of bail and is ready to furnish the appropriate bail bond before the learned Trial Court below.

5. Mr. Kalita, learned Additional Public Prosecutor, submitted in this regard that initially the case was registered under Section 302 IPC, however considering the fact that there was no intention to cause death of the deceased and also considering the fact that the entire incident had happened in a sudden fight, the accused was convicted only under Section 304(II) IPC. However, he submitted that the matter may finally be heard and decided accordingly.

6. Considering the submissions made by the learned counsels for both sides and also considering the previous conduct of the accused/applicant, I find it

appropriate to allow this interlocutory application. Accordingly, the operation of the impugned judgment and order dated 05.11.2024, passed by the learned District and Sessions Judge, Kamrup, Amingaon in Sessions Case No. 57/2016, arising out of Chhaygaon P.S. Case No. 195/2015, shall remain stayed/suspended till disposal of the connected appeal, being Crl. A. No. 388/2024.

7. Further, the applicant is hereby allowed to go on bail on his executing a bond of Rs. 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the learned District and Sessions Judge, Kamrup, Amingaon.

8. In terms of above, this interlocutory application stands disposed.

JUDGE

Comparing Assistant