

GAHC010258832024



2025:GAU-AS:14375

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

Case No. : I.A.(Crl.)/1225/2024

ROHAM ALI
S/O LATE INNAS ALI,
RESIDENT OF BHADAIPARA, PS ABHAYAPURI, DIST BONGAIGAON,
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY PP ASSAM

2:JAHURA KHATUN
W/O HARMUJ ALI

RESIDENT OF VILLAGE BHERALIPRA PART I
PS MERERCHAR
DIST BONGAIGAON
ASSA

Advocate for the Petitioner : MR H R A CHOUDHURY, MR. A M AHMED,MR. A AHMED,MR.
M A CHOUDHURY,MR. I U CHOWDHURY

Advocate for the Respondent : PP, ASSAM,

Linked Case : Crl.A./395/2023

ROHAM ALI AND 2 ORS.
S/O LATE INNAS ALI

RESIDENT OF BHADAIPARA
PS ABHAYAPURI
DIST BONGAIGAON
ASSAM

2: SARBESH ALI @ SARAB
S/O HASMAT ALI

RESIDENT OF BHADAIPARA
PS ABHAYAPURI
DIST BONGAIGAON
ASSAM

3: BADSHA MIA
S/O LATE SURUTZZAMAL
RESIDENT OF BHADAIPARA
PS ABHAYAPURI
DIST BONGAIGAON
ASSAM
VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:JAHURA KHATUN
W/O HARMUJ ALI

RESIDENT OF VILLAGE BHERALIPRA PART I
PS MERERCHAR
DIST BONGAIGAON
ASSAM

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

Linked Case : I.A.(CrI.)/1027/2023

ROHAM ALI AND 2 ORS.
S/O LATE INNAS ALI

RESIDENT OF BHADAIPARA
PS ABHAYAPURI
DIST BONGAIGAON
ASSAM

2: SARBESH ALI @ SARAB
S/O HASMAT ALI

RESIDENT OF BHADAIPARA
PS ABHAYAPURI
DIST BONGAIGAON
ASSAM

3: BADSHA MIA
S/O LATE SURUTZZAMAL
RESIDENT OF BHADAIPARA
PS ABHAYAPURI
DIST BONGAIGAON
ASSAM
VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:JAHURA KHATUN
W/O HARMUJ ALI

RESIDENT OF VILLAGE BHERALIPRA PART I
PS MERERCHAR
DIST BONGAIGAON
ASSAM

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

BEFORE
HONOURABLE MR. JUSTICE PRANJAL DAS

ORDER

28.10.2025

- 1.** Heard Mr. H.R.A Choudhury, learned senior counsel for the applicant. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State.
- 2.** Finding them guilty, the learned Additional Sessions Judge (FTC), North Salmara, Abhayapuri by its Judgment dated 18.09.2023

passed in **Sessions Case No. 42(A) of 2016, arising out of Abhayapuri Police Station Case No. 354/2015** convicted the applicant, namely **(i) Roham Ali, son of Late Innas Ali**; under Sections 326/34 of the IPC and by Order dated 20.09.2023, passed in the said Sessions Case, sentenced each of them to undergo Rigorous Imprisonment for 10(ten) years each with a fine of Rs. 50,000/- (Rupees Fifty Thousand) each, in default of payment of fine, to undergo Simple Imprisonment for another 2(two) years, setting off the period of detention already undergone by them under Section 428 Cr.P.C.

3. Aggrieved with the said Judgment of Conviction dated 18.09.2023 and Sentence dated 20.09.2023, noted above, the applicants/convicted accused persons as appellants preferred the connected statutory appeal under Section 374(2) of the Cr.P.C. on 17.10.2023 being Criminal Appeal No. 395 of 2023 that was admitted for hearing by order dated 17.11.2023.

4. By this interlocutory application, the applicants/appellants/convicted accused persons have prayed for suspension of the sentence dated 20.09.2023 passed by the learned Additional Sessions Judge (FTC), North Salmara, Abhayapuri in said Sessions Case No. 42 (A) of 2016 as well as for their bail during pendency of the connected appeal filed by them in said Sessions Case No. 42(A)/2016 that has already been admitted and stated that during the trial of the said sessions case they were on bail.

5. Vide order dated 13.08.2024 passed by the Coordinate Bench of this Court in I.A(Crl.)/1027/2023 (in Crl. Appl.

No.395/2023), two of the convicted accused persons were released on bail after suspending their sentence.

6. However, the bail of present applicant was rejected at that time and accordingly, he has come before this Court with the present interlocutory application, seeking suspension of sentence as well as grant of bail.

7. The learned senior counsel for the applicant submits that he is not going into the merits of the matter at this stage and seeks suspension of sentence in bail with regard to the applicant on the aspect of parity with the other two applicants and also in view of the possibility that the criminal appeal may not be disposed of in the immediate future.

8. The learned prosecution has filed a written objection where depositions of all the important witnesses including the victim have been discussed.

9. It is stated in the bail objection that the appellants have been rightly convicted and that the prima-facie, there is no infirmity in the impugned judgment of the learned trial court.

10. The learned Additional Public Prosecutor for the State supporting the bail objection also contends that it cannot be said definitively that there is no immediate prospect of a hearing on the criminal appeal and that the aspect of the gravity of the offences also has to be looked into.

11. The learned senior counsel for the applicant submitted that after the conviction and sentence, the applicant herein has spent 2

years 1 month serving out the sentence.

12. I have perused the materials and given my consideration to the matter on the aspect of suspension of sentence and bail, which stands on a different footing than bail in conventional bail matter. There are a catena of decisions of the Hon'ble Supreme Court governing the subject.

13. However, in one of the decision, still holding the field, the Hon'ble Supreme Court has indicated that, in the non-life sentences, perhaps the question of suspension of sentence followed by bail can be looked at somewhat liberally *per se*. In the case of ***Bhagwan Rama Shinde Gosai & Ors. Vs. State of Gujarat***, reported in **(1999) 4 SCC 421**, a reference may be made to para 2 thereof, wherein, it has been stated *inter alia* that, "*when a convicted person is sentenced to fixed period of sentence and when he files appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. On 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 limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when motion for expeditious hearing 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.

14. Of course, it would also depend upon the facts and circumstances of each case. A recent decision of the Hon'ble Supreme Court in the case of ***Kartik Pandey Vs. State of Jharkand*** has been placed wherein the Hon'ble Supreme Court was pleased to grant bail pursuant to suspension of sentences.

15. In the instant matter, it cannot be overlooked that two of the three applicants have already been granted bail pursuant to suspension of sentence.

16. In the normal course, it would be difficult to say as to when the turn of this particular appeal would come up for hearing in the absence of particular statistics before this Court.

17. Therefore, in the entire facts and circumstances and also considering the aspect of parity to some extent, it will be prudent to allow the interlocutory application, and the sentence imposed upon him by the impugned judgment of conviction dated 18.09.2023 and sentence dated 20.09.2023, **passed by the learned Additional Sessions Judge (FTC), North Salmara, Abhayapuri in Sessions Case No.42(A)/2016** is hereby **suspended** till the disposal of the criminal appeal. Further, the above-named applicant is hereby **allowed to go on bail of Rs.75,000/- (Rupees Seventy Five Thousand)** only with one local surety of the like amount to the

satisfaction of the learned Additional Sessions Judge (FTC), North Salmara, Abhayapuri. Further the following conditions are imposed –

- (i) The applicant shall not abscond;
- (ii) That the applicant shall be available to receive the appellate judgment;
- (iii) The applicant shall appear before the learned trial court **once in three months**; the learned trial court shall be at liberty to fix specific dates for the same and also modify the time frame fixed;
- (iv) The applicant shall not in any manner cause any harm to the informant or the victim;
- (v) The applicant shall not cause any harassment or harm to any of the witnesses who might have adduced evidence during the trial;

18. In view of the above, interlocutory application stands **allowed** and **disposed of**.

JUDGE

Comparing Assistant