

GAHC010256782023



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

Case No. : Crl.A./431/2023

JANARDAN KONWAR
S/O BOLIN KONWAR R/O VILL. PAHUMARA NASAGARI P.S. NORTH
LAKHIMPUR DIST. LAKHIMPUR ASSAM

VERSUS

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

2:BEDABRAT BORA @ MINTU
S/O MUHIKANTA BORA R/O VILL. RANGPURIA P.S NORTH LAKHIMPUR
DIST. LAKHIMPUR ASSA

Advocate for the Petitioner : MR. D BORA

Advocate for the Respondent : PP, ASSAM

Linked Case : I.A.(Crl.)/1138/2023

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Advocate for : MR. D BORA

Advocate for : PP

ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 19.02.2024

Heard Mr. B.K. Mahajan, learned counsel for the applicant. Mr. D. Das, learned Public Prosecutor for the State/respondent No.1 and Mr. D. Talukdar, learned counsel for the respondent No. 2.

2. This is an application under Section 389(3) Cr.P.C. praying for granting bail by suspending sentence pending appeal to the applicant in connection with the judgment and order dated 13.09.2023 passed by the learned Sessions Judge, Lakhimpur, North Lakhimpur in Sessions Case No. 30(NL)/2023, whereby convicting the accused/applicant and sentenced him to undergo rigorous imprisonment for 6(six) years and to pay fine of Rs.10,000/-, in default simple imprisonment for 6(six) months for the offence under Section 325 IPC and rigorous imprisonment for 6(six) months and to pay fine of Rs.5,000/-, in default simple imprisonment for 1(one) month for the offence under Section 120(B) IPC and further sentencing him to undergo rigorous imprisonment for 6(six) months and to pay fine of Rs.1,000/-, in default simple imprisonment for 15 days for the offence

undergo Section 279 IPC and also sentencing him to undergo rigorous imprisonment for 7(seven) years and to pay fine of Rs.10,000/-, in default simple imprisonment for 6(six) months for the offence under Section 304 Part-II of IPC.

3. The learned counsel for the applicant submits that the co-accused Sri Tikendrajit Baruah was granted bail by this Court who was convicted under Section 120B/325 IPC vide judgment and order dated 13.09.2023.

4. It is also submitted that in this case, the maximum period of imprisonment is 7(seven) years. By referring the judgment of Bhagwan Rama Shinde Gosai v. State of Gujarat, reported in (2001) 9 SCC 211, learned counsel for the applicant has pointed out that the Hon'ble Supreme Court held that "when a person is convicted and sentenced to a short-term imprisonment the normal rule is that when his appeal is pending the sentence should be suspended and rejection is only by way of exception and be put forward for such rejection. In such case also every endeavour should be made to have the appeal posted for early hearing and disposal. If the short-term sentence is allowed to run out during the pendency of the appeal, the appeal itself will become, for all practical purposes, infructuous so far as the appellant is concerned. It does not mean that the appellate court should suspend the sentence, if its consequence would be a danger to the society or any other similar difficulties." Considering this aspect, the applicant be released on bail during pendency of the appeal.

5. In response, Mr. Talukdar, learned counsel for the respondent No. 2 filed an objection against the prayer of the application by stating

that the respondent No. 2 has preferred an appeal under Section 372 Cr.P.C. before this Court for lesser offence vide Crl. Appeal No. 422/2023 which is pending before this Court. From the evidence of P.W.1, P.W.3, P.W.5 and P.W.10, it reveals that it is not a case of hit and run. Hence, the applicant ought to have been convicted under Section 302 IPC. As such, the prayer of the applicant may not be considered by suspending the sentence during pendency of the appeal.

6. On the other hand, Mr. D. Das, learned Additional Public prosecutor submits that the State has not preferred any appeal for enhancement of sentence and also has not filed any objection regarding the prayer of the applicant.

7. I have considered the submissions made by the learned counsel for the parties. I have also perused the judgment of the learned trial court.

8. Considering the nature of offence as well as the fact as reflected in the case record and without going into the merits of the case at this stage, this Court is inclined to grant the prayer of the applicant.

9. Accordingly, the accused-applicant, named above, shall be released on bail suspending the sentence during pendency of the appeal in connection with Sessions Case No. 30(NL)/2023, under Section 325/120(B)/279/304 Part II IPC, subject to the following conditions :

- (i) The applicant shall furnish a bail bond of Rs.50,000/- with two suitable sureties each of the like amount to the satisfaction of the learned Sessions Judge, Lakhimpur, North Lakhimpur;

(ii) The applicant shall not leave the territorial jurisdiction of learned Sessions Judge, Lakhimpur, North Lakhimpur, Assam without prior written permission from him/her till disposal of the appeal.

10. Nothing in this order shall be construed as an expression of opinion on the merits of the pending criminal appeal.

11. In view of the above, interlocutory application stands disposed of.

JUDGE

Comparing Assistant