

GAHC010258072023



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

Case No. : I.A.(Crl.)/1178/2023

DOLEN DAS
S/O LATE JOGESH DAS, VILL.- KUSHLAIGURI, P.O.- PATILADAHA, P.S.-
MANIKPUR, DIST.- BONGAIGON ASSAM, PIN- 783391.

VERSUS

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

2:SAILEN SARKAR
S/O LATE NAREN SARKAR

VILL.- KUSHLAIGURI

P.O.- PATILADAHA
P.S.- MANIKPUR
PIN- 783391

Advocate for the Petitioner : MR. M U MAHMUD

Advocate for the Respondent : PP, ASSAM

Linked Case : Crl.A./446/2023

DOLEN DAS
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Advocate for : MR. M U MAHMUD
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 10.04.2024

1. Heard Mr. M. U. Mahmud, learned counsel for the appellant. Mr. B. Sarma, learned Additional Public Prosecutor for the State respondent as well as Ms. T. Begum, learned counsel for the respondent no.2.

2. This application under Section 389 of the Code of Criminal Procedure, 1973 has been filed by the applicant, namely, Dolen Das, praying for suspension of sentence imposed on him by the judgment and order dated 11.10.2023, passed by learned Special Judge, Bongaigaon in Special (P) Case No. 7(M)/2021, whereby the present applicant was convicted under Section 8 of the

POCSO Act, 2012 and was sentenced to undergo rigorous imprisonment for 5 years and also to pay a fine of Rs. 5000/- and in default of payment of fine to undergo further imprisonment for 1 month. The applicant has impugned the aforesaid judgment by preferring a connected appeal which has been registered as Criminal Appeal No. 446/2023.

3. The learned counsel for the applicant has submitted that the trial court has erred in coming to the finding of guilt of the present applicant ignoring the contradictions between the star witnesses, i.e., PW-1 and PW-2, who have stated differently as regards the place of occurrence of offense.

4. Learned counsel for the applicant has also submitted that he has an arguable case in the connected appeal and there is every possibility of getting a favourable order in the connected appeal and therefore, during the pendency of the connected appeal, the operation of impugned judgment may be stayed. He has cited a ruling of the Apex Court of India in the case of **"Bhagwan Rama Shinde Gosai V. State of Gujarat"** reported in **(1999) 4 SCC 421** wherein the Apex Court has observed as follows:

"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. Of 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 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."

5. On the other hand, learned Additional Public Prosecutor as well as learned counsel for the respondent no.2 have vehemently opposed the prayer for suspension of sentence by the applicant during the pendency of the connected criminal appeal.

6. They have submitted that the trial court has correctly reach the finding of guilt on the basis of available evidence on record.

7. It is also submitted by learned Additional Public Prosecutor that the conduct of the present applicant was not good during pendency of trial as he evaded the process of the court and it is only after arrest he faced the trial.

8. I have considered the submissions made by learned counsel for both the sides and have perused the materials available on record.

9. As stated hereinbefore the Apex Court has observed in the case of ***Bhagwan Rama Shinde Gosai Vs. State of Gujarat" (Supra)*** that when a person is sentenced to a fixed period applies for an appeal, his prayer for suspension of sentence has to be considered liberally unless there are exceptional circumstances to reject the same.

10. In this case if we consider the submission of the learned counsel for the applicant regarding the contradictions pointed by him, it appears that he has an arguable case in the connected appeal.

11. It also appears that in this case the applicant has been sentenced to a short period of 5 years only and considering the pendency of numbers of criminal appeal in this court, it is unlikely that the connected Criminal Appeal

No.446/2023 would be heard very soon.

12. Hence, if in the event the connected criminal appeal is ultimately allowed, the applicant would be highly prejudiced if during the pendency of the said appeal the operation of impugned judgment is not stayed.

13. For the reasons stated above, during the pendency of the connected Criminal Appeal No. 446/2023, the sentence imposed on the present applicant by the impugned judgment shall remain suspended and the applicant is allowed to go on bail of Rs. 30,000/- (Rupees Thirty Thousand only) with one surety of like amount subject to the satisfaction of the learned Special Judge, Bongaigaon with the following conditions:

i. That the applicant shall surrender before the learned Special Judge, Bongaigaon in the event if the connected criminal appeal fails.

ii. That during the pendency of the connected criminal appeal the applicant shall not indulge in any similar offence with which he has been convicted in this case.

14. With above observation this Interlocutory Application is allowed and accordingly disposed of.

JUDGE

Comparing Assistant