

GAHC010254192023



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

Case No. : I.A.(CrI.)/1111/2023

LAL MAMUD KHAN @ MAMUD
S/O ৰাৱণসিংগীয়াৰাওলাপাৰা
• ৰাৱণ VILLAGE- ৰাৱণপাৰা
P.S.- ৰাৱণপাৰা
DIST.- ৰাৱণ
ৰাৱণ

VERSUS

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

Advocate for : MR. A M BORA
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

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

ORDER

15.05.2024

(Suman Shyam, J)

Heard Mr. A. M. Bora, learned senior counsel assisted by Ms. V. A. Choudhury,
learned counsel for the applicant. Also heard Ms B. Bhuyan, learned senior

counsel (Addl. P.P., Assam) assisted by Ms. M. Chakraborty, learned counsel appearing for the State. None has appeared for the informant.

The applicant herein is one of the six accused persons who were convicted under Sections 302/120(B)/385/323/354 of the IPC and *inter-alia* sentenced to undergo rigorous imprisonment for life and also to pay fine with default stipulation by the impugned judgment and order dated 14.09.2023 passed by the learned Additional Sessions Judge (FTC), Barpeta, Assam in connection with Sessions Case No.160/2022. Since then the applicant viz., Lal Mamud Khan *alias* Mamud is in jail. By filing the instant application, the applicant has prayed for suspension of his jail sentence and also to release him on bail.

By referring to the materials available on record, Mr. A. M. Bora, learned senior counsel for the applicant has argued that his client had no involvement in the incident but the learned trial court has convicted him only on the basis of a phone call made by one of the co-accused to the applicant. According to Mr. Bora, as per the evidence led by the prosecution, the phone call was addressed to the applicant merely to find a solution to the problem whereby the applicant has asked the accused persons to release the victim on payment of some amount. Under the circumstances, submits Mr. Bora, there is no justifiable ground to convict the appellant on any of the charges brought against him.

In support of his above argument Mr. Bora has taken us through the statement of PW-1 recorded under Section 164 C.P.C as well as her deposition before the Court so as to demonstrate the inherent contradiction in her testimony. The attention of this Court has also been invited to the testimonies of other witnesses viz., PWs-7, 11 and 13 to contend that there is not even an iota of evidence

against the applicant to convict him on the charges brought against him.

Responding to the above, Ms. B. Bhuyan, learned Addl. P.P., Assam has argued that the PW-1 has categorically stated that the telephonic conversation of accused Badsha (A/4) with the applicant Lal Mamud Khan (A/6) was incriminating and therefore, there is no infirmity on the part of the learned trial court in convicting him on the basis of such evidence available on record.

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

From the testimony of AW-1, who is the lady allegedly found in a compromising position with the victim, which had led to a commotion whereby the accused persons had allegedly threatened the victim Rubul and ultimately committed his murder, we find that although she had initially stated that Badsha (A/4) had made the phone call to Lal Mamud to seek advice as to how to resolve the dispute, later on, she had changed her version by suggesting a sinister role of Lal Mamud (A/6). However, during her cross-examination, the PW-1 has resiled from her version in the examination-in-chief and corroborated the version in the 164 Cr.P.C. statement which practically exonerates the applicant from the charges brought against him. No other evidence against the applicant could be brought to our notice by the learned Addl. P.P.

Whether the materials on record are sufficient to establish the charge of conspiracy under Section 120(B) of the IPC would require a detail hearing, which will be possible only at the time of final hearing of the appeal. However, on a preliminary appreciation of the materials on record, we are of the prima-facie opinion that the evidence available on record are insufficient to establish the charges brought against the applicant. In view of the above, we are of the

unhesitant opinion that the applicant has made out a good case for granting his prayer made in the I.A.

We, accordingly, direct that the applicant Lal Mamud Khan be released on bail on furnishing a bond of Rs.50,000/- and one local surety of like amount to the satisfaction of the learned Additional Sessions Judge (FTC), Barpeta. In addition to the above, it will be open for the learned Additional Sessions Judge (FTC), Barpeta to impose any other condition so as to release the applicant on bail. Consequently, the impugned judgment and order dated 14.09.2023 passed by the learned trial court *qua* the applicant, shall stand suspended until further orders.

Before parting with the record, we make it clear that our observations made herein above are tentative in nature, made only for the purpose of disposal of the I.A. and the same shall not have any bearing at the stage final hearing of the appeal.

I.A. stands disposed of.

JUDGE

JUDGE

Comparing Assistant