

GAHC010269552023



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

Case No. : I.A.(Crl.)/1221/2023

BABUL RABHA
S/O LATE SANTIRAM RABHA, R/O TATALAPARA, P.S.- MUSHALPUR, DIST.-
BAKSA, ASSAM, PIN- 781337.

VERSUS

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

2:HIMANI RAMCHIARY
W/O MADHU RAMCHIARY

VILL.- UZIRBARI
P.S.- MUSHALPUR
DIST.- BAKSA
ASSAM
PIN- 781377

Advocate for the Petitioner : MR. J KALITA

Advocate for the Respondent : PP, ASSAM

Linked Case : Crl.A./462/2023

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Advocate for : MR. J KALITA

Advocate for : PP

ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 15.03.2024

Heard Mr. J. Kalita, learned counsel for the applicant. Mr. D.P. Goswami, learned Public Prosecutor for the State/respondent No.1.

2. This is an application under Section 389 Cr.P.C. praying for granting bail by suspending sentence pending appeal to the applicant in connection with the judgment and order dated 04.10.2023 passed by the learned Sessions Judge, Baksa, Mushalpur, in connection with Sessions Case No. 284/2018(arising out of Mushalpur P.S. Case No. 26/2018), whereby convicting the accused/applicant and sentenced

him to undergo rigorous imprisonment for 7(seven) years and to pay a fine of Rs.2,000/-, in default to undergo rigorous imprisonment for another 6 months for the offence committed under Section 376(I) of IPC and also sentenced him to simple imprisonment for 6 months for the offence committed under Section 448 of IPC.

3. The learned counsel for the applicant submits that the applicant has been convicted under Section 376(I) IPC and sentenced to undergo rigorous imprisonment for 7 years, out of which the applicant has already been completed one year detention in jail hazot. The victim being a married woman, is a consenting party to have sexual intercourse with the petitioner. It is further submitted that the victim has changed her version 2/3 times. The learned counsel for the applicant has pointed out that the medical report of the victim which shows more than 7 days old injury which cannot be the injury caused by the applicant as because the victim was examined by the doctor on the next date of the incident.

4. It is also submitted that there are lots of contradictions in the evidence of the witnesses and there is every possibility of acquittal of the applicant in the case. Considering these aspects, the applicant be released on bail during pendency of the appeal.

5. On the other hand, Mr. Goswami, learned Additional Public prosecutor submits that there is sufficient incriminating materials in the case. However, on the basis of the sentence imposed on the petitioner, bail may be granted during pendency of the appeal without going into the merits of the case.

6. I have considered the submissions made by the learned counsel

for the parties as well as perused the judgment of the learned trial court.

7. Considering the submission of learned counsel for the parties, without going into the merit of the case, prayer of the applicant is allowed.

8. Accordingly, the accused-applicant, named above, shall be released on bail suspending the sentence during appeal in connection with Sessions Case No. 284/2018(arising out of Mushalpur P.S. Case No. 26/2018), under Section 376(I)/448 IPC, subject to the following conditions :

(i) The applicant shall furnish a bail bond of Rs.30,000/- with two suitable sureties each of the like amount to the satisfaction of the learned Sessions Judge, Baksa, Mushalpur.

(ii) The learned Sessions Judge, Baksa, Mushalpur will be at liberty to impose any condition(s) while releasing the applicant on bail.

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

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

JUDGE

Comparing Assistant