

GAHC010272702023



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

**Case No. : I.A.(Crl.)/1238/2023**  
**In Crl.A. No.465/2023**

1. LATU GOGOI @ CHANDRAJIT GOGOI AND 4 ORS.  
S/O LATE NRIPEN GOGOI, R/O BETBARI NO. 2, KONWAR GAON,  
SIVASAGAR, ASSAM, PIN- 785674.

2: RANA CHANGMAI  
S/O LATE NABIN CHANGMAI  
R/O BETBARI NO. 2, KONWAR GAON  
SIVASAGAR, ASSAM, PIN- 785674.

3: RUSTOM HUSSAIN  
S/O LT. BADRUL HUSSAIN  
R/O STATION CHARIALI, A.T. ROAD  
SIVASAGAR, ASSAM, PIN- 785640.

4: DEBOJIT GOGOI  
S/O LATE NRIPEN GOGOI  
R/O BETBARI NO. 2, KONWAR GAON  
SIVASAGAR, ASSAM, PIN- 785674.

5: NIPUJIT GOGOI  
S/O L.T NIPEN GOGOI  
R/O BETBARI NO. 2, KONWAR GAON  
SIVASAGAR, ASSAM, PIN- 785674

VERSUS

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

**Advocate for the Petitioner : MR P KATAKI**

**Advocate for the Respondent :**

**- B E F O R E -**

**HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA**

**ORDER**

**22.03.2024**

- 1.** Heard Mr. P. Kataki, learned counsel for the applicants. Also heard Mr. B. Sarma, learned Additional Public Prosecutor, Assam.
- 2.** This application under Section 389(2) of the Code of the Criminal Procedure, 1973 has been filed by the applicants, namely, (1) Sri Latu Gogoi @ Chandrajit Gogoi, (2) Sri Rana Changmai, (3) Sri Rustom Hussain, (4) Sri Debojit Gogoi and (5) Sri Nipujit Gogoi, praying for suspension of sentence which was imposed on the said applicants by the judgment dated 30.09.2023 passed by the learned Sessions Judge, Sivasagar in Sessions Case No.165(S-S)/2010 whereby the present applicants were convicted under Section 304 Part II/34 of the Indian Penal Code and were sentenced to undergo Rigorous Imprisonment for 5(five) years. They were also convicted under Section 325 of the Indian Penal Code and were sentenced to undergo Rigorous Imprisonment for 1(one) year and to pay a fine of Rs.5,000/- (Rupees Five thousand) each and in default of payment of fine, to undergo Rigorous Imprisonment for another term of 3(three) months.
- 3.** The aforesaid judgment dated 30.09.2023 has been impugned by the present applicants by preferring the connected appeal, being CrI.A. No.465/2023.
- 4.** The facts relevant for consideration of the instant application are that on

15.10.2007, at around 3:00 P.M., the informant came to know that the applicants had assaulted one customer at Hotel Neptune and he became senseless and after some time, the accused persons named in the F.I.R. (the present applicants) came to the said Hotel and assaulted the owners, namely, Pankaj Gogoi and one Pinkul Gogoi with a *dao*.

**5.** On receipt of the said F.I.R., Sivasagar P.S. Case No.567/2007 under Sections 448/326/325/34 of the Indian Penal Code was registered.

Subsequently, during the pendency of the investigation, Pinkul Gogoi succumbed to his injuries and Section 302 of the Indian Penal Code was added to the case.

**6.** The investigation was initiated and ultimately on completion of the investigation, charge-sheet was laid against the present applicants and one Jyoti Changmai under Section 148/149/325/302 of Indian Penal Code.

**7.** All the applicants faced the trial before the court of learned Sessions Judge, Sivasagar in the Sessions Case registered as Sessions Case No.165(S-S)/2010. After the appearance of the present applicants before the trial court on 10.01.2010, charges were framed under Sections 448/325/302/34 of the Indian Penal Code. When the said charges were read over and explained to the present applicants, they pleaded that their innocence and claimed to be tried.

**8.** During trial, the prosecution side examined as many as 24 witnesses. It is pertinent to mention herein that one of the accused Jyoti Changmai expired during the pendency of the trial and therefore, the case against him got abated. After closure of the examination of prosecution witnesses, the applicants were examined under Section 313 of Code of Criminal Procedure, 1973 during which they pleaded their innocence and denied the truthfulness of the prosecution

witnesses. They also adduced 5(five) defence witnesses in their defence. However, ultimately, by the judgment dated 30.09.2010 which has been impugned in the connected appeal, the applicants were convicted and sentenced in the manner as already described in the foregoing paragraphs.

**9.** Mr. P. Kataki, learned counsel appearing for the applicants has submitted that the maximum period for which each of the present applicants has been sentenced is only for 5(five) years and it is also submitted that the applicants in the connected appeal have a fair chance of getting a verdict of acquittal.

**10.** Learned counsel for the applicants has also submitted that though the trial court had not believed the testimony of most of the prosecution witnesses and has come to the conclusion that the present applicants were not the aggressor in the incident which resulted into commission of the alleged offence, it declined to accept the argument of the learned counsel for the defence side that the applicants were exercising their right of private defence. Learned counsel for the applicants has submitted that the finding of the trial court is perverse.

**11.** Learned counsel for the applicants has submitted that as the applicants have a fair chance of succeeding in the connected appeal, they should be allowed to go on bail after suspending the sentence imposed on them, during the pendency of the connected appeal. Otherwise, in the event of ultimately getting a verdict of acquittal in the connected appeal, they would be greatly prejudiced.

**12.** On the other hand, Mr. B. Sarma, learned Additional Public Prosecutor, Assam has submitted that there is no perversity in the judgment of the trial court. It is also submitted that the prosecution witnesses have implicated the present applicants and the trial court has correctly come to the finding of guilt

of the present applicants under Section 304 Part II of the Indian Penal Code. It is also submitted that there is unlikelihood of any success in the connected appeal filed by the applicants.

**13.** I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record carefully including the trial court record which is presently available.

**14.** On perusal of the impugned judgment, it appears that the trial court did come to a conclusion that the present applicants were not the aggressor in the second incident which gave rise to the present case. Therefore, this Court is of the considered opinion that the applicants have an arguable case in the connected appeal to show that they acted in exercise of their right of private defence. It also appears that the applicants have been sentenced to a maximum period of 5(five) years and the connected appeal is filed in the year 2023 only and considering the number of pending appeals in this Court, it is unlikely that the appeal would be heard very shortly.

**15.** The Apex Court has also observed in many of its rulings that where the sentence against which the appeal has been preferred, is for a short period, the general rule is to grant bail to the appellants during the pendency of the appeal unless something exceptional is shown by the other side. In the present case, nothing such exceptional could be shown by the respondent side and this Court is of the considered opinion that ultimately, if in the connected appeal, the applicants are found to be innocent and their appeal is allowed and if they are not allowed to go on bail during the pendency of the connected appeal, they would be greatly prejudiced.

**16.** In view of the reasons mentioned hereinabove, this Court is of the

considered opinion that the ends of justice demands that during the pendency of the connected appeal, i.e. CrI.A. No.465/2023, the sentenced imposed on the present applicants by impugned judgment dated 30.09.2023 passed by the learned Sessions Judge, Sivasagar in Sessions Case No.165(S-S)/2010 is required to be suspended and it is accordingly done.

**17.** During the pendency of the connected appeal, the applicants are also allowed to go on bail of Rs.30,000/- (Rupees Thirty Thousand) each with a suitable surety of like amount subject to the satisfaction of the learned Sessions Judge, Sivasagar with the following conditions:-

- (i) that the applicants shall surrender before the Court of learned Additional Sessions Judge, Sivasagar in the event the connected appeal filed by them fails;
- (ii) the applicants shall not indulge in any such offence for which they have been convicted by the judgment which is impugned in the connected appeal.

**18.** With the above observation and direction, the present I.A. is disposed of.

**JUDGE**

**Comparing Assistant**