

GAHC010275732023



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

Case No. : I.A.(CrI.)/1193/2023

NITYANANDA BARUA,
S/O LATE AKHOY KUMAR BARUA BARMAN,
R/O PANIGAON, P.S.- PANIGAON, DIST.- LAKHIMPUR, ASSAM.

VERSUS

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

2:NITUL DUTTA
S/O SRI PRAFULLA DUTTA
R/O PANIGAON
P.S.- PANIGAON
DIST.- LAKHIMPUR
ASSAM
PIN- 787052

Advocate for the Petitioner : MR S M ABDULLAH P

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 03-04-2024

[M. Choudhury, J]

Heard Ms. F. Hussain, learned counsel for the applicant and Ms. S.H.

Borah, learned Additional Public Prosecutor for the respondent no. 1, State of Assam.

2. In the Order passed on 28.02.2024, it was observed that the notice on the respondent no. 2 was duly served.

3. The instant application is preferred under Section 389, Code of Criminal Procedure, 1973 [CrPC] seeking suspension of the execution of sentence passed against the applicant and for his release on bail. It may be stated that the applicant as the appellant, has preferred the connected appeal, Crl.A. no. 347/2023 against the Judgment and Order dated 22.06.2023 passed by the Court of learned Sessions Judge, Lakhimpur in Sessions Case no. 180[NL]/2017 [The State of Assam vs. Sri Nityananda Baruah Barman]. By the said Judgment and Order, the applicant-appellant has been convicted under Section 302, Indian Penal Code [IPC] and he has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/-, with default stipulation.

4. Ms. Hussain, learned counsel for the applicant-appellant has submitted that the conviction was solely passed on the basis of testimony of an alleged eye-witness, who was incidentally the mother of the deceased and therefore, the said alleged eye-witness was an interested witness. According to Ms. Hussain, there was previous enmity between the applicant-appellant and the deceased and such dispute was with regard to a road leading to the houses of both the applicant-appellant and the deceased. Ms. Hussain has further contended that the alleged weapon of assault which was recovered, was not the actual weapon whereby the injuries were inflicted on the person of the deceased could have been inflicted. Ms. Hussain has further submitted that during the course of the trial court proceeding the applicant-accused was on bail

and during the course of the trial, there was no allegation of misuse of liberty.

5. Ms. Borah, learned Additional Public Prosecutor has submitted that, at the stage of consideration of an application under Section 389, CrPC, in a case where it is palpably clear that the appeal might not result into affirmation of the trial court Judgment then only suspension of the execution of sentence can be considered. In the case in hand, there was an eye-witness and the version of the eye-witness was consistent with the injuries sustained by the deceased, as recorded in the Post-Mortem Examination Report.

6. We have considered the submissions of the learned counsel for the parties and also have gone through the materials on record as available in the Paper-Book.

7. As regards the submission of the learned counsel for the applicant-appellant that there was no misuse of liberty on the part of the applicant-appellant during the course of the trial, such contention cannot be countenanced. It is settled that the mere fact that during the trial, the accused was granted bail and there was no allegation of misuse of liberty is not of much significance. The effect of bail granted during trial loses significance when on completion of trial, the accused has been found guilty. The mere fact that during the period when the accused person was on bail during trial, there was no misuse of liberties, does not *per se* warrants suspension of execution of sentence and grant of bail.

8. What really is necessary to be considered by the appellate court in an application filed under Section 389, CrPC is whether the reasons exist to suspend the execution of sentence and thereafter, to grant bail. It is settled that

in a case involving conviction under Section 302, IPC, the appellate court has to consider the relevant factors like the nature of allegations, manner of commission of crime, gravity of the offence and the desirability of releasing the accused on bail after having been convicted for committing the serious offence of murder. It may be mentioned that the discretion under Section 389, CrPC is to be exercised judicially and the appellate court is required to consider whether any cogent ground has been disclosed, giving rise to substantial doubts about the validity of the conviction and whether there is likelihood of unreasonable delay in disposal of the appeal. Insofar as the issue of the delay is concerned, as the paper book has already been prepared, the connected appeal can be considered in an expeditious manner.

9. From the materials on record, it has emerged that the deceased had sustained at least four sharp cut wounds in the vital parts of the body like face, occipital region, skull, etc. As per the Post-Mortem Examination Report, the cause of death was hypovolemic shock caused by active bleeding from multiple sharp injuries. The mother of the victim, examined as P.W.8 by the prosecution side, had claimed that she was a witness to the alleged incident. In her testimony, she had deposed that it was in her presence, the applicant-appellant gave blows with a *dao* causing severe bleeding injuries on the head, face, neck and back of her son.

10. In view of such materials on record, we are not persuaded to reach a view that this is a fit case for suspension of execution of sentence exercising the discretion under Section 389, CrPC and accordingly, the instant application is found bereft of merit. Resultantly, it is dismissed.

11. We further make it clear that any observations here touching the merits of

the case are purely for the purpose of deciding the present application and shall not be construed as an expression of the final opinion in the connected appeal.

JUDGE

JUDGE

Comparing Assistant