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

Case No. : I.A.(Crl.)/1026/2026

TOSER ALI
SON OF MOHAR ALI SK
VILLAGE- THURIBARI
P.S.- BASUGAON
DISTRICT- CHIRANG
BTC
ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

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

BEFORE
HONOURABLE MRS. JUSTICE SHAMIMA JAHAN

ORDER

Date : 07.10.2026

Heard Mr. AM Ahmed, learned Counsel for the applicant and Mr. DP Goswami, learned Additional Public Prosecutor for the State.

2. By this application filed under Section 430 of the BNSS, 2023, the applicant has prayed for suspension of the sentence imposed upon him by judgment and order dated 04.08.2026 passed by the learned Sessions Judge, Chirang, Kajalgaon in Sessions Case No.23 of 2025, by which the applicant was convicted under Section 117(2) of the BNS, 2023 and was sentenced to undergo RI for a period of three years with fine and default stipulation.

3. The learned Counsel for the applicant submits that by order dated 04.08.2026, the Appellate Court had allowed the applicant to remain on previous bail till the appeal is filed before the High Court as provided under Section 430 of the BNSS, 2023. It is further held by the Hon'ble Apex Court that the convicted appellant should be released on bail during the pendency of the criminal appeal if the applicant is imposed with a sentence of fixed terms.

4. The Apex Court had also held that the bail can be refused only on exceptional grounds if at all it exists. In the instant case, it is seen that the petitioner was imposed with a sentence of three year incarceration. On the merits of the case, the learned Counsel for the applicant stated that there are contradictions, which were proved by the Investigating Officer during his testimony before the Trial Court. Further, he submits that PW1, who was alleged to be the eye witness stated in his cross-examination that he had not stated before the Police that someone had attacked him and when the Police was examined, the Police stated before the Court that PW1 had stated that someone had attacked him suddenly.

5. As such, the learned Counsel submits that there is a contradiction and PW1 cannot be arrayed as the eye witness. The Court on satisfaction of the said submissions, prima facie deems it fit to suspend the operation of the judgment and order dated 04.08.2026 passed by the Sessions Court in Sessions Case No.

23/2025 during the pendency of the instant criminal appeal.

6. The applicant is as such allowed to remain on previous bail as has been ordered by the Sessions Court.

7. I.A is disposed of.

JUDGE

Comparing Assistant