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2026:GAU-

AS:15261-DB

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

Case No. : I.A.(Crl.)/1159/2025

FULCHAND @ FULCHAND ALI AND 3 ORS
SON OF ABDUL KADER ALI, RESIDENT OF POCHAR CHAR PART-I, P.S. SOUTH SALMARA, DISTRICT - DHUBRI, ASSAM.

2: AYNAL HOQUE
SON OF KOBAT HUSSAIN
RESIDENT OF POCHAR CHAR PART-I
P.S. SOUTH SALMARA
DISTRICT - DHUBRI
ASSAM.

3: ABU BAKKAR SIDDIQUE
SON OF ABU BAREK SK
RESIDENT OF POCHAR CHAR PART-I
P.S. SOUTH SALMARA
DISTRICT - DHUBRI
ASSAM.

4: ROFIQUL ISLAM
SON OF KUDDUS ALI
RESIDENT OF POCHAR CHAR PART-I
P.S. SOUTH SALMARA
DISTRICT - DHUBRI
ASSAM

VERSUS

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

2:BASER ALI
SON OF LATE HAZI SUKUR ALI
RESIDENT OF POCHAR CHAR PART-I

P.S. SOUTH SALMARA
DISTRICT - DHUBRI
ASSAM
PIN 78312

Advocate for the Petitioner : MR. A CHAUDHURY, MR. D BORA,MR. N MAHAJAN,MR. P K DAS

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR

ORDER

08.10.2026

(Rajesh Mazumdar, J)

Heard Mr. B.K. Mahajan, learned counsel appearing for the petitioners. Also heard Ms. A. Begum, learned PP, Assam.

2. The applicants herein had filed the accompanying Criminal Appeal No. 398/2025, assailing the Judgment & Order dated 29.08.2025 passed by the learned Additional Sessions Judge, Dhubri, Assam in Session Case No. 319/2018.

3. The present application has been filed under Section 430(2) of the BNSS, 2023 for suspension of the sentence and for subsequent bail pending consideration of the connected appeal. Objections in this present application under Section 430(2) of the BNSS, 2023 have been filed by the Office of the

Addl. Public Prosecutor, Assam.

3. The learned counsel for the petitioner, Mr. B.K. Mahajan, has submitted that the 4 (four) convicts in Session Case No. 319/2018 have preferred a common appeal and this Interlocutory Application is also filed conjointly praying for suspension of the sentence during the pendency of the connected criminal appeal.

4. The learned counsel for the applicant/appellant submits that a perusal of the depositions of the prosecution witnesses Nos. 1 to 15 would show that there are enough materials to hold that the prosecution had failed to prove the case against the petitioners beyond reasonable doubt. The learned counsel for the petitioner has drawn the attention of the Court to the deposition of PW No. 1 to show that none of the present appellants had been implicated. He has thereafter drawn attention to the deposition of PW No. 2 and has submitted that the assertion of PW No. 2 regarding the involvement of the appellant/ applicant No. 1, who was present at the time of the occurrence, has been proved to be contradicted during the trial.

5. The learned counsel has thereafter submitted that none of the other witnesses implicate any of the appellants herein with regard to the alleged incident. He has submitted that there is sufficient scope for the appellants

succeeding in the appeal and therefore in the facts and circumstances, the suspension of the sentence awarded by the learned Trial Court is called for.

6. The learned APP, Ms. A. Begum, has submitted that the evidence of PW No. 2 indicates that the accused had inhumanly assaulted several persons on the fateful day. She has submitted that the challenge to the orders passed by the learned Trial Court in convicting and sentencing the appellants herein does not contain any flaw and, therefore, keeping in view the fact that the appellants herein have been convicted of committing the offence of murder, their prayer for suspending the sentence imposed does not require further consideration of this Court.

7. We have heard the learned counsel for the parties. We have also gone through the depositions of the different witnesses.

8. Prima Facie, there is force in the submission of the learned counsel for the petitioner that the appellants have not been implicated by any of the witnesses in a manner which may indicate that the guilt of the applicants can be said to have been proved beyond reasonable doubt. This, however, is a prima facie view, while considering the prayer for suspension of the sentence imposed. On considering the materials on record and having due regard to the objections filed by the State, we are of the view that the sentence to be undergone by the

applicants deserves to be suspended till final disposal of the appeal.

The sentence is accordingly suspended.

9. Consequently, the applicants are to be released on bail on furnishing bonds of Rs. 30,000/- each with two sureties each of the like amount to the satisfaction of the learned Trial Court.

10. Any observations or findings made in this order shall not be construed to be final findings or observations at the time of hearing of the appeal.

11. The IA is accordingly allowed and disposed of.

JUDGE **JUDGE**

Comparing Assistant