

GAHC010026502023



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

**Case No. : I.A.(Crl.)/507/2023
in
Crl.A./216/2023**

MOSHAROF ALI @ MOSHARAF ALI
S/O BABAR ALI
RESIDENT OF VILLAGE PAHARTOLI
PO P. CHATALA
PS KALGACHIA
DIST. BARPETA
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP
ASSAM

2:MOINAL SHEIKH
S/O LATE NOIMUDDIN SHEIKH
VILLAGE BARJANA PART III
PO BARJANA
PS JOGIGHOPA
DIST BONGAIGAON
ASSAM 783382

Advocate for : MR. A M KHAN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
ORDER

20-08-2024

Heard Mr. A. M. Khan, learned counsel for the applicant and Ms. A. Begum, learned Additional Public Prosecutor, Assam for the opposite party No.1.

2. By judgment of conviction and sentence dated 06.12.2022, passed by the learned Additional Sessions Judge, (FTC), Barpeta, in Sessions Case No. 91/2022 (reference - G.R. Case No. 215/2022) arising out of Kalgachia P.S. Case No. 21/2022 the applicant has been convicted under Sections 304-B/306 IPC and sentenced to undergo Rigorous Imprisonment for 10 (ten) years, with fine of Rs.10,000/- and in default of payment of fine, to undergo Simple Imprisonment for another 6 (six) months under Section 306 IPC, setting off the previous period of detention from the total period of conviction.

3. Aggrieved with the said judgment of conviction and sentence dated 06.12.2022, passed by the learned Additional Sessions Judge, (FTC), Barpeta, in Sessions Case No. 91/2022, the applicant preferred a statutory appeal, being Crl. Appeal No. 216/2023, which was admitted for hearing by order dated 12.02.2024.

4. By this interlocutory application, the applicant/appellant/convicted accused person has prayed for suspension of the sentence dated 06.12.2022 passed by the learned Additional Sessions Judge, (FTC), Barpeta, in said Sessions Case No. 91/2022 as well as for his bail during pendency of the connected appeal filed by him, noted above.

5. It is seen from the records of the case that during investigation of the case, he was taken into custody on 18.01.2022 and was released on bail by order dated 25.04.2022. Thereafter, he was taken into custody on the passing of the judgment on 06.12.2022 and since then, he is serving the sentence.

6. By placing the evidence of Pw-6, namely, Dr. Nabajit Barman, the concerned autopsy doctor, Mr. Khan, learned counsel submitted that the deceased, wife of the convict died

because of asphyxia committing suicide by her and during the post-mortem examination of the deceased, no such injuries on her person was found excepting the oblique non-continuous ligature mark.

7. It is also submitted by Mr. Khan, learned counsel that the prosecution could not place any material before the Court about the amount that was demanded as dowry by the convict and in that regard, the Investigating Officer of the case also clarified that during his investigation, he did not find any demand of dowry made by the convict from the deceased or from her parents.

8. Mr. Khan, learned counsel also placed the evidences of Pw-1 and Pw-2 to show that the prosecution failed to establish the total amount of dowry/demand of money made by the convict. It is also stated that the convict and the deceased had love affair and prior to their marriage, on two occasions they eloped and that there was no such involvement on the part of the convict with regard to the death of the deceased, his wife.

9. On the other hand, Ms. A. Begum, learned Additional P.P. Assam from the objection filed by her on behalf of the State on 11.08.2023 submitted that the deceased died in her matrimonial home within 4 months of her marriage and that their marriage was peaceful only for a period of one month and thereafter, the convict started torturing her mentally and physically and by demanding dowry from her and her parents and because of the compelling situation, she had to face death.

10. In this regard, placing the evidences of Pw-1, namely, Moinal Sheikh, father of the deceased, Pw-7, namely, Mofidul Islam, brother of the deceased and Pw-2, namely, Noser Ali, uncle of the deceased, Ms. Begum, learned Addl. P.P., submitted that the evidences adduced by these witnesses remained intact to the extent that the father of the deceased clearly deposed that while standing on the bed it will be about chest height to the place from where the deceased allegedly committed suicide by hanging. Pw-7 in his evidence deposed that the house of the convict is made of polythene and question of hanging in such a situation from ceiling does not arise. Pw-2, uncle of the deceased in his evidence deposed that his niece was married with the convict for about four months.

11. It is also seen from the deposition of the concerned Investigating Officer of the case,

Pw-8 that during his cross, he admitted that there was a mention by the father of the deceased that the convict demanded money, but he did not specify any particular amount of money that he demanded from the deceased.

12. Considering such materials in the case record and finding that the deceased died in the house of the convict within four months of marriage and on the night of the incident in the presence of the convict, this Court is of the view that it is not a fit case to grant bail to the convict/applicant in said Sessions Case No. 91/2022 (reference - G.R. Case No. 215/2022) arising out of Kalgachia P.S. Case No. 21/2022 at this stage.

13. Accordingly, this Interlocutory Application of the convict/applicant for suspension of the impugned judgment of conviction and sentence dated 06.12.2022, passed by the learned Additional Sessions Judge, (FTC), Barpeta in said Sessions Case No. 91/2022 stands rejected.

JUDGE

Comparing Assistant