

GAHC010018282017



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

Case No. : I.A.(Crl.) 231/2017
In Crl Appl. No. 114 of 2017

MD. AKKASH ALI
S/O- MD INNAS ALI, R/O- VILL- AND P.O- AMOLAPAM, P.S- TEZPUR, DIST-
SONITPUR, ASSAM

VERSUS

1:THE STATE OF ASSAM and ANR.

2:MD. NAYAB ALI
S/O LATE ABDUL KUDDUSH
R/O VILL. AMOLAPAM
P.S. TEZPUR, DIST. SONITPUR, ASSAM

Advocate for the Petitioner : MR.P BISWAS

Advocate for the Respondent :

BEFORE
HONBLE MR. JUSTICE UJJAL BHUYAN
HON BLE MR. JUSTICE NELSON SAILO

ORDER

Date : 28-02-2018

(Ujjal Bhuyan, J)

Heard Mr. A. K. Bhuyan, learned counsel for the appellant and Ms. S. H. Bora, learned Addl. PP, Assam.

This application has been filed under Section 389 of the *Code of Criminal Procedure, 1973* for suspension of sentence and for grant of bail to the appellant Md. Akkash Ali.

Be it stated that by the judgment and order dated 20.04.2016 passed by the learned Addl. Sessions Judge, Sonitpur at Tezpur in Sessions Case No. 167/2013, appellant and two others, namely, Md. Jakir Hussain and Md. Jiabur Rahman, were convicted under Sections 302/34 IPC and thereafter sentenced to undergo rigorous imprisonment for life and to pay fine of Rs. 1000.00 each, with a default stipulation. The said conviction and sentence is under challenge in Crl. Appeal No. 114/2017, which was admitted for hearing on 04.04.2017.

Mr. Bhuyan, learned counsel for the appellant strenuously argued that there is no admissible evidence on record to justify conviction of the appellant under Sections 302/34 IPC. Therefore, it is a fit case for grant of bail to the appellant pending disposal of the appeal.

On the other hand, Ms. Bora, learned Addl. PP has referred to the evidence tendered by PWs 3, 4 & 6 to contend that there are enough incriminating evidence implicating the appellant in the commission of the offence. She submits that the motive for involvement of the appellant in the offence i.e. having illicit relationship with the wife of the deceased has come on evidence of PW 3 and PW 6. That apart, at the stage of consideration of bail, Court may not enter into a detailed appreciation of the evidence.

Submissions made by learned counsel for the parties have been considered.

The basic prosecution case as can be seen from the first information report is that PW 1, Nayab Ali lodged first information on 07.04.2013 before the Borghat Police Outpost under Tezpur Police Station stating that at about 7:00 p.m. on 06.04.2013 his son Hussain Ali had gone to Borguri village to purchase one Godrej almirah, but he did not return home. Next morning, his dead body was found in a paddy field in Alimur village.

PW 1 i.e. the informant and PW 2 i.e. the brother-in-law of the deceased in their evidence did not say anything against the appellant. In so far evidence of PW 3, Md. Firoz Ali, is concerned he stated that when he had gone to the police station he had seen Jakir Hussain, co-accused, confessing before the police that he alongwith two of his accomplices had committed the murder. On being shown by Jakir Hussain, the police recovered one *dao* and bamboo stick from the house of Amir Ali, father of Jiabur, another co-accused. PW 3 however stated that Akkas Ali (appellant) had an illicit relationship with the wife of the deceased and that was the reason for killing the deceased.

According to PW 5, Mojammil Haque, when he went to the police station he saw the appellant there and appellant had made a statement before the police that he alongwith Jakir Hussain and two others had killed Hussain Ali. Likewise, PW 6 Fiddus Ali also stated that he was present in the police station when Jakir made the statement before the police admitting that he alongwith Jiabur and Akkash Ali (appellant) had killed the deceased. He further stated that appellant had an illicit relationship with the wife of the deceased.

Having an illicit relationship with the wife of the deceased could be a reason for committing the murder of the deceased but in the absence of any admissible evidence to establish this fact and other corroborative evidence, we are afraid we can place reliance on this statement alone to implicate the appellant in the commission of the murder. As noticed above, it was the statement of co-accused, Jakir before the police in police station which had implicated the appellant. The statement leading to discovery was made by Jakir and the material exhibits were seized from the residence of Amir Ali, father of the co-accused Jiabur. According to PW 5, appellant's confession of committing the murder was made before the police in the police station, which is no evidence at all being hit by Sections 25 and 26 of the *Evidence Act, 1872*.

Prima face, we find that the prosecution case against the appellant may not withstand the scrutiny of law and, therefore, we are of the opinion that it would be in the interest of justice to enlarge the appellant on bail during pendency of the criminal appeal, moreso when early hearing of this criminal appeal which is of the year 2017 may not be possible.

Accordingly, we direct that appellant Md. Akkas Ali be enlarged on bail on furnishing bail bond of **Rs. 25,000/-** with one surety of the like amount before the learned Addl. Sessions Judge, Sonitpur at Tezpur.

IA stands allowed.

JUDGE

JUDGE

Comparing Assistant