

GAHC010174612025



2025:GAU-AS:13329

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

Case No. : I.A.(Crl.)823/2025

JIABUR RAHMAN AND 2 ORS.
SON OF MD ABDUL HYE

2: SEKBOR ALI @ SEKBAR ALI
SON OF MD ABDUL MAZID @ ABDUL MOJIT

3: ABDUL MOTALEB @ MATALEB ALI
SON OF LATE ABDUL SAMED
R/O VILLAGE BORKURANI
P/S. MAYONG
P/O. GAGALMARI
DIST. MORIGAON
ASSAM-782121.
VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP ASSAM

Advocate for : S K PODDAR
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

Linked Case : Crl.A./295/2025

ABDUL MAZID @ ABDUL MOJIT AND 3 ORS.
SON OF LATE AYES ALI

2: JIABUR RAHMAN

SON OF ABDUL HYE

3: SEKBOR ALI @ SEKBAR ALI
SON OF ABDUL MAZID

4: ABDUL MOTALEB @ MATALEB ALI
SON OF LATE ABDUL SAMED

ALL ARE RESIDENT OF VILLAGE BORKURANI
P/O. GUGALMARI
P/S. MAYONG
DIST. MORIGAON
ASSAM-782121.
VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP ASSAM

Advocate for : S K PODDAR
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

**BEFORE
HONOURABLE MR. JUSTICE PRANJAL DAS**

JUDGMENT AND ORDER (ORAL)

Date : 24.09.2025

Heard Mr. S.K. Poddar and Mr. D. Ullah, learned counsels for the applicants/appellants. Also heard Mr. P. Barthakur, learned Additional Public Prosecutor for the State.

2. The instant interlocutory application is preferred seeking suspension of execution of the sentence passed against the three applicants-appellants and for their release on bail.

3. The applicants as the appellants have preferred the accompanying appeal,

Criminal Appeal no. 395/2025 against a Judgment dated 10.07.2025 and order on sentence dated 11.07.2025 passed by the Court of learned Additional Sessions Judge, Morigaon in Sessions Case no. 97/2017. By the Judgment dated 10.07.2025, the applicants-appellants have been found guilty of the offence under Section 307 r/w Section 34, IPC; Section 326 r/w Section 34, IPC; and Section 341 r/w Section 34, IPC. By the Order on sentence dated 11.07.2025, the applicants-appellants have been sentenced to undergo simple imprisonment for one month with fine and default stipulation under Sections 341/34, IPC; rigorous imprisonment for ten years with fine and default stipulation under Sections 326/34, IPC; and rigorous imprisonment for ten years with fine and default stipulation under Sections 307/34, IPC.

4. The learned counsels appearing for the applicants side has taken the Court through some portions of the impugned judgment of conviction, pointing out some infirmities therein. It is also pointed out from parts of the depositions about a supposed error made by the learned trial court regarding the presence of the present convict applicants at the place of occurrence. It is also contended and submitted that pursuant to invocation of 319 of the CrPC, bringing on record more accused persons to face trial – the learned court below should have proceeded to conduct *de novo* trial with regard to those persons which was not done in the instant case. In this regard, the learned counsel has referred to a decision of the Hon'ble Supreme Court in the case of ***Shashikant Singh vs. Tarkeshwar Singh & Anr.*** reported in ***(2002) 5 SCC 738***.

5. Drawing attention to para 10 of the aforesaid judgment, it is submitted that the Hon'ble Apex Court has clearly stipulated that, in case of new persons being arraigned as accused, invoking the said statutory provision of the criminal

procedure code, *de novo* trial has to be conducted with regard to them and in this context, submitted that failing to do so would vitiate the trial. In support of the contentions for suspension of sentence and bail in a case like this, the learned petitioners counsel has referred to the case of Hon'ble Supreme Court in the case of ***Bhagwan Rama Shinde Gosai & Ors. Vs. State of Gujarat***, reported in ***(1999) 4 SCC 421***. The attention of the court is drawn to para 2 thereof, wherein, it has been stated *inter alia* that, "*when a convicted person is sentenced to fixed period of sentence and when he files appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when motion for expeditious hearing the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter of suspending the sentence. So as to make the appeal right meaningful and effective. Of course appellate courts can impose similar conditions when bail is granted.*

6. Reliance has also been placed on another decision – a recent one – of the Hon'ble Apex Court rendered in the case of ***Suo Moto Writ Petition (Criminal) No(s). 4/2021***, reported in ***SLP(Crl) No. 529/2021***. The judgment rendered on 08.05.2025, discussed various aspects of the criminal

justice system. It is contended by drawing attention to para 13, that, the Hon'ble Apex Court held inter alia that "*there is one more issue which is flagged by the Amicus Curiae. There are criminal appeals against conviction where a sentence of limited duration has been imposed. The learned Amicus Curiae has invited our attention to the decisions of this Court in the case of Bhagwan Rama Shinde Gosai v. State of Gujarat, (1999) 4 SCC 421, Narcotic Control Bureau v. Lakhwinder Singh, (2025) SCC OnLine SC 366 and Atul @ Ashutosh v. State of M.P., (2024) 3 SCC 663. This Court has consistently held that when there is a fixed period of sentence, normally the power of suspension of sentence under Section 389 of the Code of Criminal Procedure, 1973 should be exercised liberally, unless there are exceptional circumstances brought on record. The High Courts are bound by the law laid down by this Court in this regard. This is significant in the context of the fact that the figures shows that in some of the High Courts in case of large number of appeals against conviction, the accused have been denied bail.*" It is submitted by the applicants' side that the convict appellants shall abide by any conditions; shall not abscond and shall be available during the appeal.

7. The prosecution has filed a written objection, opposing the suspension of sentence and bail at this case. The main grounds have been narrated in para 4 and its sub-clauses. I have perused the said narrations. It is submitted by the learned prosecution that there is no infirmity in the judgment of the learned trial court, convicting and sentencing the appellants. The prosecution evidence is, contended to be cogent and successfully proving the guilt of the convict appellants. It may be mentioned here in that, one of the contentions of the applicants' side is that the injuries which were taken as proved by the learned trial court holding them to be grievous, are not grievous as defined within the

meaning of section 319 of the IPC.

8. On this point, the learned prosecution, through its contentions, submits that since the nature of the injuries also includes fracture – it belies the aforesaid contention of the appellants side. Summing up the submissions, Mr. Borthakur, the learned Additional Public Prosecutor, supporting the written objection against suspension of sentence – submits that considering the nature of the sentence, the merits of the impugned judgment – the application for suspension of sentence and bail may be rejected.

9. I have perused the interlocutory application; some parts of the impugned judgment pointed out during the hearing; the written objection filed by the prosecution; the case laws submitted at the Bar. I have also considered the submissions of the learned counsels for the applicants and the learned Additional Public Prosecutor.

10. As already stated at the outset, the applicants/appellants were convicted under various sections and the highest sentence of 10 years rigorous imprisonment was imposed with regard to his conviction under section 307/326 IPC.

11. From the applicants' side, it is submitted that the present applicants are in custody since 10-07-2025. While considering a question of suspension of sentence and bail in a criminal appeal, two of the most important considerations for the court would be as to whether the convict appellants will be available to receive the appellate judgment and whether the convict appellate after being granted bail might risk causing any harm to the witnesses, informant etc.

Though some broad possibilities on merits can perhaps be looked at, while adjudicating suspension of sentence and bail, but in terms of the settled law of the Hon'ble Supreme Court – certainly no full hearing on merits can be undertaken. The same may also prejudice the appellants. Nevertheless, in a situation where some glaring defect in the trial court judgment is noticed, that might be a relevant factor in the adjudication in a matter of this kind.

12. Another relevant factor to consider is what is the possibility of the appeal coming up for final hearing in the future. Alternatively, it can be said that how long after registration of the case, the appeal is likely to come up for hearing from the queue in the normal course would certainly be a relevant factor also.

13. Needless to say that, if the convict appellants undergoes a whole or substantial part of the sentence and ultimately his appeal results in acquittal – the same could not only be violative of his constitutional rights, but could also damage the credibility and prestige of the institution of the criminal justice system, including most importantly the credibility/prestige of the institution of appellate courts. Of course, that does not mean that in applications filed for suspension of sentence and bail, the same shall be allowed in every case as a matter of course. In most such adjudications, various factors have to be balanced to arrive at a decision which is believed to be most in conformity with justice.

14. Coming back to the facts of the instant case, before going further, a reference may be made to the decision of ***Bhagwan Rama Shinde Gosai(supra)***. From these principles laid down by the Hon'ble Supreme Court, it is clear that generally speaking the Hon'ble Apex court has encouraged

invocation of power of suspension of sentence and bail in case of fixed sentences i.e. sentences other than life imprisonment with remission.

15. The present criminal appeal has been registered in the year 2025 and at this stage it is not possible to hazard a guess as to when it can come for hearing in the normal course. This Court while deciding this matter does not have data about the approximate number of criminal appeals ahead of the present criminal appeal in the queue waiting for their turn of hearing in the normal course.

16. The prosecution has undoubtedly made some serious contentions on merits of the trial court judgment and has contended the possibility of the impugned judgment passing the test of appeal. Nevertheless, the other aspects of the matter as indicated also cannot be brushed aside. More importantly, the guidelines and principles indicated and laid down by the Hon'ble Supreme Court have to be kept in mind by this Court and that this court is bound to do so in the interest of justice and judicial discipline. It cannot be overlooked that the present sentence of 10 years is not a short term sentence. It would probably fall in the category of a stringent sentence. The possibility and the risks attended with releasing the appellants on bail at this stage are always there.

17. It also has to be kept in mind that presumption of innocence would not be applicable at this stage. However, it cannot be denied that admission of a criminal appeal means that the appellate court has agreed to re-look at the question of guilt of the appellants as recorded by the learned trial court.

18. In the entire facts and circumstances, I am of the considered view that if the two basic concerns of the court as indicated in the earlier part of the order

can be taken care of by imposing conditions – then perhaps, the convict appellants can be released on bail at this stage by suspending his sentence.

19. Consequently, accepting this interlocutory application, it is directed that execution of sentence imposed vide order dated 11-07-2025 passed by the learned Additional Sessions Judge Morigaon in Sessions Case No. 97/2017, pursuant to conviction dated 10-07-2025, is hereby suspended till disposal of the appeal. Further, the applicants, namely, **(i) Jiabur Rahman (ii) Sekbor Ali @ Sekbar Ali (ii) Abdul Motaleb @ Mataleb Ali**, shall be released on bail of Rs. 50,000/- **each** with one surety **each** of the like amount, to the satisfaction of the learned trial court. Further the following conditions are imposed –

(i) The applicants shall not abscond;

(ii) That the applicants shall be available to receive the appellate judgment;

(iii) The applicants shall appear before the learned trial court **once in three months**; the learned trial court shall be at liberty to fix specific dates for the same and also modify the time frame fixed;

(iv) The applicants shall not in any manner cause any harm to the informant or the victim;

(v) The applicants shall not cause any harassment or harm to any of the witnesses who might have adduced evidence during the trial;

20. In case of any violation of the bail conditions, the learned prosecution or informant side shall be at liberty to seek cancellation of the bail;

21. Nothing in this order shall be construed as an expression of opinion on the merits of the pending criminal appeal.

22. In view of the above, interlocutory application stands **allowed** and disposed of.

JUDGE

Comparing Assistant