

Criminal Appeal No. 9556 of 2022

11.01.2024

Mr. S.M. Mahbubul Islam, Advocate

...for the appellant.

Mrs. Yesmin Begum Bithi, D.A.G.

...for the State.

This is an application for bail in a pending appeal.

The accused appellants are found guilty under section 302, 34 of the Penal Code and sentencing them to suffer imprisonment for life and to pay a fine of Tk.20,000/-, in default, to suffer rigorous imprisonment for 1 year more.

Mr. S.M. Mahbubul Islam, the learned Advocate appearing on behalf of the Convict appellant has submitted that the appellant was on bail at the trial stage and he never misused the privilege of bail. Learned Advocate has further submitted that the appellant petitioner has been taken into Jail hayat on the date of judgment i.e. on 04.10.2022 and since then he has been languishing in Jail. Learned Advocate has further submitted that it is evident from the evidence of P.W.8 the learned Magistrate who recorded the confession of a co-accused Raju Mollah that he did not endorse any memorandum in the confession, so the said confession cannot be taken into consideration as per section 30 of the Evidence Act. Learned Advocate has further

submitted that it is evident from the materials on the record that the convict appellant has been convicted on the basis a confession of co accuse, confession of a Co accused cannot only be the basis of conviction if the same (confession) is not corroborated by any other independent witness. Learned Advocate has earnestly submitted that the conviction and sentence may not be found tenable at the time of hearing of the appeal as the injury which has been mentioned against this appellant petitioner has not been corroborated by the Doctor (PW-2).

Mrs. Yesmin Begum Bithi, learned Deputy Attorney General for the respondent opposes the prayer for bail.

We have considered the submissions of both sides, perused the evidence and materials on record so far available.

Admittedly this is an appeal of 2022. The learned Advocate has submitted that the conviction and sentence may not be found tenable at the time of hearing of the appeal. It appears from the record the convict appellant was present before the trial court at the time of trial and he never misused the privilege of bail and he was very much present on the date

of judgment and on that date he was taken to jail, Moreover, there is no certainty as to when the appeal will be hard, in that view of the matter the prayer for bail is allowed.

Let the convict appellant Md. Shariful Islam alias Sharif son of Md. Amzad Hossain alias Amzad Dafadar, be enlarged on bail till disposal of the appeal after furnishing bail bond to the satisfaction of the Chief Judicial Magistrate, Kushtia.