

Criminal Appeal No. 12283 of 2023

31.01.2024

Present :

Mr. Justice Md. Rezaul Haque

And

Mr. Justice Md. Khairul Alam

Ms. Shathika Hossain, Advocate

.....For the Convict-appellant-petitioner

Ms. Yesmin Begum Bithi, DAG

...For the State

This is an application for bail in a pending appeal.

The convict-appellants have been convicted under sections 302/34 of the Penal Code and sentenced to suffer rigorous imprisonment for life and also to pay a fine of Tk. 5,000/- (five thousand) in default to suffer rigorous imprisonment for 05 (five) months more.

Ms. Shathika Hossain, the learned Advocate appearing on behalf of the convict-appellants has submitted that the trial of the appellants was held in absentia without complying with the provisions of sections 87 and 88 of the Code of Criminal Procedure. After pronouncement of the judgment the appellants were arrested on 23.11.2023 and were sent to jail and since then they have been languishing in jail. Learned Advocate has further submitted that the prosecution examined 17 witnesses to prove the case but

none of the prosecution witnesses disclosed the name of the appellants. Neither the appellants nor any co-accused made any confession under section 164 of the Code of Criminal Procedure implicating the appellants, there the conviction of the appellants is based on no evidence therefore, they have every chance of acquittal but it is uncertain as to when the appeal will be heard. Accordingly, he has prayed for enlarging the appellant on bail.

Ms. Yesmin Begum Bithi, the learned Deputy Attorney General for the respondent has opposed the prayer for bail of the appellant.

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

Admittedly, this is an appeal of 2023. The appellants have been sentenced to suffer rigorous imprisonment for life along with a fine. It has been alleged that the trial of the appellants was held in absentia without complying with the provisions of sections 87 and 88 of the Code of Criminal Procedure. It has further been alleged that the prosecution examined 17 witnesses to prove the case but none of the

prosecution witnesses disclosed the name of the appellants. Neither the appellants nor any co-accused made any confession under section 164 of the Code of Criminal Procedure implicating the appellants, there the conviction of the appellants is based on no evidence therefore, the appellants have every chance of acquittal but it is uncertain as to when the appeal will be heard. In that view of the matter, the prayer for bail of the appellants are allowed.

Let the Convict-Appellant Nos. **1. Jhantu, son of late Afil Biswas, 2. Rafiq, son of late Tokkel Ali**, are granted bail till disposal of the appeal, on furnishing bail bond subject to the satisfaction of the learned Additional Sessions Judge, 1st Court, Jhenaidah.

Kashem/B.O