

17.08.2021
Item no. 6
Ct. No.30
PA

**C.R.A. No. 93 of 2018
WITH
CRAN 1 OF 2019 (Old No. CRAN 4785 of 2019)**

In Re: An appeal under Section 389(1) of the Code of Criminal Procedure, 1973.

In the matter of:- Rakesh Malo

..... appellant/petitioner.

Mr. Sudip Ghosh Chowdhury, Adv.

.... For the appellant/petitioner

Mr. Saibal Bapuli, APP.

Mr. Arijit Ganguli, Adv.

Mr. A. Bhattacharyya, Adv.

.... For the State

This is an application for suspension of sentence and grant of bail, pending appeal preferred against the order of conviction and sentence.

The petitioner /appellant has been convicted under Sections 302 I.P.C., 25(1-B) of Arms Act, and Section 394 I.P.C., and sentenced to life imprisonment being maximum punishment.

Learned advocate for the petitioner submits that petitioner was all along on bail during trial, and he never misused the liberty violating the conditions of bail. There are serious infirmities/contradictions in the testimony of witnesses, which though brought to the notice of Trial Court, but the same were not duly redressed. The conviction has been reached against the petitioner capitalizing T.I.P., but such T.I.P. was belatedly held,

providing sufficient space for the investigating agency to pre-identify the suspect detained in custody by the witnesses to be presented in T.I.P., and as such no credence should be attached to T.I.P report. It is further submitted that the recovery of pipe-gun from petitioner is also doubtful, and thus the circumstances do not unerringly point to the guilt of the petitioner. Since there is no possibility towards early disposal of this appeal, and since the petitioner has not shown any misconduct during the trial, petitioner is entitled to bail upon suspension of his sentence.

Learned advocate for the State raises objection against the prayer for suspension of sentence and grant of bail. It is submitted by the State that strong circumstances have surfaced in the testimony of witnesses about the involvement of petitioner in the instant case of robbery, which have been duly appreciated by the learned trial judge. The petitioner was identified in T.I.P. by the informant/P.W.-1, in whose jewellery shop robbery was committed by petitioner having arms in his hands with another, and co-accused accompanying the petitioner was intercepted immediately, from whom booty had been recovered, but the petitioner fled away. Some young people living in the locality, after hearing an alarm, raised by the owner of jewellery shop and his employee, chased the petitioner having pipe-gun in his hand, when the petitioner caused gunshot wound to one Tarak Singh, who ultimately succumbed to the injuries.

Having considered the submission of both sides and upon assessing the nature, quality and strength of prosecution

evidence, it appears that the petitioner was identified by the PW-1 being the owner of jewellery shop, and there is recovery of pipe-gun from the possession of the petitioner. The prayer for T.I.P was made on the date of forwarding the accused/petitioner to court and the T.I.P was held precluding the possibility of any collusion on the date scheduled by court. Deceased succumbed to the injuries having received gunshot wound from a close range. No patent infirmity/contradiction is there in the evidence, which may suggest that the decision has been erroneously reached.

Though petitioner was all along on bail during the course of trial, but while dealing with suspension of sentence and grant of bail, we need to ponder upon such issue in the face of a finding of guilt reached by the Trial Court, which does not suffer from any patent infirmity.

In an application under Section 389 Cr.P.C., there is hardly any scope for re-assessment of the evidence to take a different view, when particularly there is evidence and that was duly considered by the trial court. In the absence of such patent infirmities in order of conviction, we are of the considered view that this is not a fit case where the privilege of bail should be granted to petitioner upon suspending the sentence.

The prayers for suspension of sentence and grant of bail are rejected.

The CRAN application being No. CRAN 1 OF 2019 (Old No. CRAN 4785 of 2019) is disposed of.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Subhasis Dasgupta, J.)

(Tapabrata Chakraborty, J.)