

20.
15-07-2021
(ct. no.30)
debajyoti

CRA 168 of 2020
with
IA NO:CRAN/1/2020 (Old NO:CRAN/2769/2020)
with
IA NO:CRAN/2/2020
with
IA NO:CRAN/3/2020

In re: An application for bail under Section 389(1) of the Code of Criminal Procedure being CRAN 2 of 2020 filed on 23-09-2020.

- A n d -

In the matter of : Md. Peyara @ Rajkumar
... appellant/applicant.

Mr. Jaydeep Biswas,
Mr. Soumyadeep Das,
Mr. Kaushik Ghosh

... For the appellant/applicant.

Mr. Saibal Bapuli, learned APP,
Mr. Subrata Roy,
Mr. Arijit Ganguly

... For the State.

The appellant in CRA 168 of 2020 has filed the present application, being CRAN 2 of 2020 for suspension of sentence imposed by learned Court below. The appellant has been convicted of offences under Sections 394 and 397 of the Indian Penal Code (in short, IPC). For the offence punishable under Section 394 of IPC, the appellant has been sentenced to suffer rigorous imprisonment for ten years and fine of Rs.20,000/-, in default, to undergo rigorous imprisonment for three months. For the offence punishable under Section 397 of IPC, the appellant has been sentenced to suffer rigorous imprisonment for seven years and fine of Rs.20,000/-, in default, to undergo rigorous imprisonment for three months, with an observation that the sentences will run concurrently.

Mr. Biswas, learned advocate, appearing for the appellant/applicant submits that there are contradictions in the testimonies of the witnesses but the same had been

disregarded by the learned Court below without any valid reason. The appellant was not given any benefit though the learned court below arrived at a specific finding that the investigation was defective and the investigating officer had been negligent. In the said conspectus, there is every chance of success in the appeal which has been admitted by this Court by an order dated 7th July, 2020.

He further submits that the appellant had already undergone imprisonment for a period of four years and seven months and there is also no possibility towards early disposal of the present appeal.

Mr. Bapuli, learned advocate, appearing for the State opposes the appellant's prayer and drawing the attention of this Court to the contents of the judgment, he submits that the sequence of event establishes the direct involvement of the appellant in the offence.

We have assessed the quality of evidence recorded by the learned trial Court. On an overall appreciation of the evidence and considering the entire facts and circumstances of the case, we are of the opinion that this is not a case where it can be said that the appellant has no chance of succeeding in the appeal. The appellant/applicant had already served a substantial period of sentence and there is also no real likelihood of the appeal being heard in the near future. Keeping in view the principles of law laid down by the Hon'ble Supreme Court in the case of **Kashmira Singh Vs. The State of Punjab**, reported in **(1977) 4 Supreme Court Cases 291**, we are of the opinion that it would be appropriate to suspend the sentence and grant bail to the appellant.

Accordingly, we suspend the sentence and direct that the appellant shall be released on bail upon furnishing a bond of Rs.20,000/- with two sureties of like amount each, one of them must be local, subject to the satisfaction of the learned Additional Chief Judicial Magistrate, Sealdah with a further condition that the appellant shall meet with the Officer-in-Charge of Topsia Police Station once in a fortnight on and from 20th July, 2021 until further orders.

The application being CRAN 2 of 2020 and the connected applications being CRAN 1 of 2020 (Old NO: CRAN 2769 of 2020) and CRAN 3 of 2020 are, accordingly, disposed of.

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

(Suvra Ghosh, J.)

(Tapabrata Chakraborty, J.)