

22.07.2021

Ct.No.30

Sl. No.5

P.A/A.P

CRA No. 171 of 2021

with

CRAN 1 of 2021 [Suspension of sentence]

In Re:- **Ramesh Kumar Shaw @ Ramesh Shaw @ Dabbu**

- Appellant

- Vs-

State of West Bengal

- Opposite Party

Mr. Phiroje Edulji,
Mr. Jagadis Chandra Majumdar,
Mr. Shibaji Kumar Das,
Mr. Soumyajit Das Mahapatra,
Mr. Ahshan Ahmed,
Ms. Rupsa Sreemani
... for the Appellant/Petitioner

Mr. Ranabir Roy Chowdhury,
Mr. Mainak Gupta
... for the State.

In the present application under 389 of the Code, the petitioner has prayed for suspension of sentence imposed upon him on 22nd February, 2021 in Sessions Case No. 390 of 2013 by the Learned Additional Sessions Judge, 3rd Court, Barrackpore, Dist: 24 Parganas North.

By the judgment impugned, the petitioner was convicted for offence punishable under section 302 read with section 34 of the Penal Code and was sentenced to suffer imprisonment for life and pay fine of Rs. 50,000/- each. The petitioner has come up in appeal against the said judgment and order and has prayed for suspension of the sentence imposed upon him, pending disposal of the appeal, in the instant application.

Taking the court through the evidence on record, learned counsel for the petitioner has pointed out to the contradictions/inconsistencies in the evidence of witnesses. It is

submitted on behalf of the petitioner that P.Ws. 1, 2, 3, 4 and 6 are interested witnesses, P. Ws. 1 to 4 being related to the victim and P.W. 6 having strained relation with the petitioner and as such, conviction of the petitioner on the testimony of such witnesses cannot be sustained in law. The blood samples were not sent for chemical examination and there is reasonable doubt with regard to the exact place of occurrence of the incident. The petitioner has been falsely implicated and has an arguable case in appeal, so much so that chance of his acquittal in the appeal cannot be wholly ruled out. It is further submitted that the petitioner was on bail during trial and has never misused the said liberty. Moreover, in view of the prevailing pandemic, the prayer of the petitioner ought to be considered liberally keeping in mind the health and safety of the petitioner.

The State vehemently opposes the prayer of the petitioner and submits that the petitioner has been convicted for an offence as serious as under section 302 of the Penal Code and does not deserve suspension of sentence merely on the ground that he did not misuse his liberty throughout the trial. Allegations against the petitioner has been substantiated by eye witnesses viz., P.Ws. - 1, 2, 3, 4 and 6 and their evidence cannot be brushed aside merely on the ground that they are either related to the victim or are interested witnesses. The petitioner does not deserve any concession at this stage and his prayer ought to be rejected.

We have heard the learned counsel appearing for the petitioner as well as the State and have assessed the evidence

recorded by the learned trial court as well as the trial court's analysis of the same in the judgment impugned. The moot question for consideration in the present application is whether the sentence imposed upon the petitioner can be suspended, pending disposal of the appeal.

The record reveals that the learned trial court, in convicting the petitioner, dealt with the evidence on record as well as argument canvassed by learned counsel for the parties in support of their respective cases.

At this juncture, we are tempted to refer to the decision in **Preet Pal Singh v/s The State of Uttar Pradesh and Another** in Criminal Appeal No. 520 of 2020 wherein the Hon'ble Supreme Court has observed that *"In considering an application for suspension of sentence, the Appellate Court is only to examine if there is such patent infirmity in the order of conviction that renders the order of conviction prima facie erroneous. Where there is evidence that has been considered by the Trial Court, it is not open to a Court considering application under [Section 389](#) to re-assess and/or re-analyze the same evidence and take a different view, to suspend the execution of the sentence and release the convict on bail"*.

In the present case, we do not find any strong and compelling reason to enlarge the petitioner on bail at this stage and regard being had to the prima facie merits of the appeal, evidence on record, observation of the learned trial court as well as involvement of the petitioner in the offence, we are not inclined to exercise discretion in favour of this petitioner. The

mere fact that the petitioner was on bail during trial and did not misuse such liberty cannot per se be a ground for suspension of sentence in isolation of other factors. [(2004) 6 SCC 175].

Accordingly, the prayer of petitioner is rejected.

CRAN 1 of 2021 in connection with CRA 171 of 2021 is accordingly disposed of.

Urgent Photostat certified copies of this order, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J.)

(Tapabrata Chakraborty, J.)