

22.07.2021

Ct.No.30

Sl. No. 6

P.A/A.P

CRA No. 172 of 2021

with

CRAN 1 of 2021 [Suspension of sentence]

In Re:- **Motilal @ Matilal Shaw & Others**

- Appellants

- 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 Appellants/Petitioners

Mr. Madhusudan Sur,
Mr. Dipankar Paramanick

... for the State.

In the present application under 389 of the Code, the petitioners have prayed for suspension of sentence imposed upon them 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 petitioners were convicted for offence punishable under section 302 read with section 34 of the Penal Code and were sentenced to suffer imprisonment for life and pay fine of Rs.50,000/- each. The petitioners have come up in appeal against the said judgment and order and have prayed for suspension of the sentence imposed upon them, pending disposal of the appeal, in the instant application.

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

submitted on behalf of the petitioners that PWs 1,2,3,4 and 6 are interested witnesses, PWs 1 to 4 being related to the victim and PW 6 having strained relation with the petitioners and as such, conviction of the petitioners 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 petitioners have been falsely implicated and have an arguable case in appeal, so much so that chance of their acquittal in the appeal cannot be wholly ruled out. It is further submitted that the petitioners were on bail during trial and have never misused the said liberty. Moreover, in view of the prevailing pandemic, the prayer of the petitioners ought to be considered liberally keeping in mind the health and safety of the petitioners, more so, as petitioner no. 1 is an old and ailing person aged about 75 years.

The State vehemently opposes the prayer of the petitioners and submits that the petitioners have been convicted for an offence as serious as under section 302 of the Penal Code and do not deserve suspension of sentence merely on the ground that they did not misuse their liberty throughout the trial. Allegations against the petitioners have been substantiated by eye witnesses viz., PW- 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 petitioners do not deserve any concession at this stage and their prayer ought to be rejected.

We have heard the learned counsel appearing for the petitioners 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 petitioners can be suspended, pending disposal of the appeal.

The record reveals that the learned trial court, in convicting the petitioners, 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 nos 2 and 3 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 petitioners no. 2 and 3 in the offence, we are not inclined to exercise discretion in favour of these petitioners. The mere fact that the petitioners were 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]. However, it appears that petitioner no. 1, who is the father of petitioners no. 2 and 3 is aged about 75 years and he is not the principal assailant who caused the death of the victim. Considering the evidence against petitioner no. 1 as well as his age, we are inclined to grant an order of suspension of sentence in his favour, pending disposal of the appeal.

Accordingly, the prayer of petitioners no. 2 and 3 is rejected.

Sentence imposed upon petitioner no. 1 be suspended, pending disposal of the appeal.

Petitioner No.1 Motilal @ Matilal Shaw be released on bail on furnishing bond of Rs. 20,000/- with two sureties of like amount, out of whom one should be local, subject to satisfaction of Learned Additional Chief Judicial Magistrate, Barrackpore, District North 24-Parganas.

CRAN 1 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.)