

30.11.2021
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allowed

**CRA 188 of 2020
(CRAN 5 of 2021)**

In Re : An application for suspension of sentence under Section 389 of the Code of Criminal Procedure.

And

In Re : Avijit Roy appellant

Mr. Koustav Bagchi
Mr. Debayan Ghosh

..... for the appellant

Mr. Saibal Bapuli, learned A.P.P.
Ms. Sayanti Santra
Mr. Bibaswan Bhattacharyya

..... for the State

Learned Counsel appearing for the appellant submits that the appellant was on bail during trial and did not misuse his liberty in any manner whatsoever. He also submits that oral dying declaration sought to be proved by P.Ws 2,3, 4 and 6 is at variance with the written dying declaration (Exhibit-5). In the written dying declaration the appellant is not named as the person who shot at the deceased.

Learned Additional Public Prosecutor opposes the prayer for bail and submits that oral dying declaration made by P.Ws 2,3,4 and 6 implicates the appellant and Bapi as the persons who fired at the victim.

We have considered the materials on record. There is variance with regard to the role of the appellant in the alleged incident as appearing from the dying declaration recorded in

the injury report vis-a-vis the oral version coming from the depositions of P.Ws. 2,3,4 and 6. The appellant appears to have made out an arguable case as impact of such dichotomy has to be assessed during hearing of the appeal.

Under such circumstances and as the appellant was on bail during trial and did not misuse his liberty in any manner whatsoever, we are inclined to suspend the sentence of the appellant and we direct that he shall be released on bail of Rs.20,000/-, with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned trial court and on condition that he shall appear before the trial court once in a month till disposal of the appeal.

In the event the appellant fails to do so, the trial court shall forthwith intimate such fact to this Court and the department shall place this matter before the appropriate Bench for necessary order in accordance with law.

The application being CRAN 5 of 2021 is disposed of.

Paper books be prepared within six weeks from the date of receipt of the lower court records.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)

