

CRA No.299 of 2019
with
IA No. CRAN 1 of 2019 (Old No. CRAN 2888 of 2019)
with
IA No. CRAN 2 of 2020 (Old No. CRAN 2521 of 2020)

In re: An application under Section 389 (1) of the Code of Criminal Procedure filed on 02-08-2019 being IA No. CRAN 1 of 2019 (Old No. CRAN No. 2888 of 2019).

- A n d -

In the matter of : Rabi @ Rabindranath Das & ors.
.... Appellants.

Mr. Sekhar Basu, Sr. Adv.
Mr. Saryati Datta

... For the appellants

Mr. Madhu Sudan Sur, A.P.P.,
Mr. N. Mahata

... For the State.

Re : IA No. CRAN 1 of 2019 (Old No. CRAN 2888 of 2019)

1. We have heard learned Senior Counsel for the appellants in this captioned application seeking an order for suspension of sentence and grant of bail pending appeal as well as learned Additional Public Prosecutor for the State.

2. The appeal relates to the verdict in Sessions Case No. 17(2)18 of the Court of Additional Sessions Judge, 5th Court, Krishnagar, Nadia.

3. Learned Senior Counsel pointed out that there was a case and counter-case and it was obligatory for the prosecution to ensure that the trial of triable case and counter-case are carried out before the same Court, simultaneously. The decision of the Hon'ble Supreme Court of India in the case of **Sudhir & Ors. Vs. State of M. P.**,

reported in **(2001) 2 Supreme Court Cases 688** is relied on to buttress this argument.

4. Learned Counsel for the prosecution cannot refute the fact that there was case and counter-case since that fact is discernible even from the second paragraph at page number 22 of the impugned judgment. The Court below says that the accused did not apply for transfer of case for simultaneous consideration and that the Court below came to know of such situation only during the cross-examination of P.W. 10, the Investigating Officer. We may state that the role of the Investigating Officer in such cases and the prosecuting agency when such matters are brought in trial, calls for a comprehensive look at least at the level of prosecution to ensure the case and the counter-case and trial in the manner delineated and prescribed by the Hon'ble Apex Court in **Sudhir & Ors (supra)** in terms of Article 141 of the Constitution of India.

5. Be that as it may, we have also considered the material findings on the basis of evidence in the case in hand, which obviously tend to indicate that had there been simultaneous trial, the resultant decision could not have paved way to any miscarriage of justice.

6. For the aforesaid reasons, we are of the view that the appellants are entitled to an order of suspension of sentence and grant of bail and we accordingly allow this application to the extent that the appellants shall be released on bail upon furnishing bail bonds of Rs.10,000/- (Rupees Ten Thousand) each, with two sureties of like amount each, one of whom must be local, to the satisfaction of learned Chief Judicial Magistrate, Krishnagar, Nadia and on further condition that the appellants shall meet the Officer-in-Charge of the concerned police station once a month and further that the

appellants shall be personally present or be represented before this Court when the appeal is taken up for hearing.

7. List the appeal for hearing as and when the same becomes ready for hearing.

8. The application being IA No. CRAN 1 of 2019 (Old No. CRAN 2888 of 2019) is, thus, disposed of.

9. Criminal Section is directed to supply urgent photostat certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

Re : IA No. CRAN 2 of 2020 (Old No. CRAN 2521 of 2020)

10. This order is being passed upon the undertaking by the Learned Advocate on record for the appellants that the Court fee shall be deposited within a week from date.

11. Accordingly, IA No. CRAN 2 of 2020 (Old No. CRAN 2521 of 2020) is disposed of.

(Thottathil B. Radhakrishnan, C.J.)

(Shampa Sarkar, J.)