

17.08.2021
Court No.30
Item No. 10
Avijit Mitra

**CRA No. 395 of 2019
with
IA No. CRAN No. 1 of 2021
(through video Conference)**

In Re:- An application under section 389 of the Code of Criminal Procedure filed in connection with Session Trial No. 233 of 2017;

And

In Re : Prakash Pandey

Petitioner/Appellant

Mr. Mrityunjoy Chatterjee,
Mr. Debapriya Majumder

..... for the Petitioner/Appellant

Mr. Sanjoy Bardhan,
Mr. Palash Chandra Majhi

....for the State

This is an application for suspension of sentence and grant of bail pending appeal preferred against an order of conviction and sentence.

The petitioner has been convicted under Sections 489B/489C of the Indian Penal Code with a sentence of 10 years being the maximum one.

Learned advocate for the petitioner submits that the petitioner has already suffered incarceration of more than 6 years and thus he has undergone a substantive period of term imprisonment, awarded against the petitioner, and in case of term imprisonment, the Court should liberally consider the prayer for suspension of sentence.

It is submitted that conviction under Section 489B I.P.C. has been erroneously reached merely for the recovery of

counterfeited notes from petitioner with a face value of Rs.14,500/- ignoring the infirmities/contradictions contained in the testimony of witnesses, which though brought to the notice of the Court, but remained unredressed.

It is further submitted that conclusion of guilt reached by the Trial Court is otherwise explainable, and when there is chance of success in the appeal, the petitioner should be enlarged on bail upon suspending the sentence, bearing in mind that there is no immediate possibility towards early disposal of this appeal.

Mr. Bardhan, learned advocate for the State raises objection against the prayer for suspension of sentence and grant of bail. It is submitted that PW-1, an independent witness, though declared as hostile to prosecution, but the same would not matter much, as PW-1 proved his signature appearing in the seizure list, and thus recovery of forged notes goes uncontroverted. PW-2- PW-6 being the members of the raiding team corroborated the version, as regards recovery of counterfeited notes from the possession of the petitioner.

Mr. Bardhan further submits that for the recovery of huge counterfeited notes from the possession of petitioner, learned Trial Judge has rightly reached conviction under Sections 489B/489C by necessary implication that petitioner was possessing such counterfeited notes in the interest of trafficking of forged notes.

We have heard the submission of both sides. Upon an overall assessment of quality of evidence of the prosecution case, strength of the prosecution witnesses, we are of considered view that the Trial Court proceeded to hold the petitioner guilty of

offences under Sections 489B/489C, taking into account the recovery of counterfeited notes from the possession of petitioner, without ascribing any independent reasons for offence under Section 489B of I.P.C. and without satisfying the ingredients thereunder.

The evidence is not so strong that the conclusion of guilt reached by the Trial Court may not be otherwise explainable. This is a case, where there is chance of success in the appeal, and in view of the above, we are of the view that it is a fit case, where we should exercise our discretion so as to enlarge the petitioner on bail upon suspending the sentence.

For these reasons, we allow this application, suspend the sentence and direct that pending hearing of the appeal, the petitioner/appellant, namely, **Prakash Pandey** shall be released on bail upon furnishing a bond of Rs.50,000/- with two sureties of Rs. 25,000/- each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Howrah with condition that the petitioner shall meet with the Officer-in-Charge, Malipanchghora Police Station once in a week immediately after release until further orders.

Accordingly, the application for suspension of sentence, being CRAN No. 1 of 2021 is disposed of.

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

(Subhasis Dasgupta, J.)

(Tapabrata Chakraborty, J.)