

17.08.2021
Court No.30
Sdas
11
granted

CRAN 1 of 2019(Old CRAN 4774 of 2019)
with
CRAN 2 of 2020
in
C.R.A. No.438 of 2019

In Re:- Applications for suspension of sentence under section
389 of the Code of Criminal Procedure;

And

In Re : Sk. Azharuddin @ Sonu Petitioner/Appellant

Mr. Fasiur Rahman Molla

Mr. Banibrata Datta

Ms. Mukulika Saha

... for the Petitioner/Appellant

Mr. S. G. Mukherjee, learned P.P.

Ms. Faria Hossain

Mr. Aniket Mitra

... 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/appellant has been convicted of offences punishable under Section 363 of the Indian Penal Code read with Section 4 of the POCSO Act with maximum sentence of 10 years and fine with default clauses.

Learned advocate appearing for the petitioner/appellant submits that the petitioner/appellant has been undergoing detention after being convicted in this case in consequence of his love affairs with the victim girl, who voluntary left her parental home, and got herself married with the petitioner/appellant after being converted to Muslim.

Learned advocate for the petitioner/appellant further submits that the petitioner/appellant was all along on bail during trial. He has not shown any misconduct violating the conditions of bail. According to the petitioner/appellant, victim did not disclose anything revealing that she had been subjected to penetrative assault under Section 4 of the POCSO Act. The medical evidence considered by the learned trial court does not support that the victim was ever subjected to any penetrative sexual assault. Since there is no immediate possibility towards early disposal of the appeal, in such conspectus, the petitioner/appellant should be enlarged on bail upon suspending the sentence.

Learned advocate appearing for the State raises objection against the suspension of sentence and grant of bail. It is submitted by the State that the victim was taken away from the custody of her parents, while she was minor. After ossification test, victim girl was found to be of 17 years old. As the victim was taken away by the petitioner/appellant, when she did not reach even her age of discretion, the learned court below has rightly convicted the petitioner/appellant upon due application of Section 90 of the Indian Penal Code.

We have heard both sides and assessed the nature, quality of the evidence and strength of the prosecution witnesses examined in this case. Victim girl, during her minority period, left her parental home to get herself married with the petitioner/appellant after being converted to Muslim. The statement of victim recorded under Section 164 of the Code of Criminal Procedure together with the medical evidence, given by P.W-11, *prima facie* leaves us space to think that

conclusion of guilt reached by Trial Court may be otherwise explainable also. This is not a case where there is no chance of success in the appeal.

Under such circumstances, without expressing any opinion on the merits of this case, and the culpability of petitioner, we are of the considered view that this is a fit case, where we should exercise our discretion by granting bail to the petitioner/appellant upon suspending the sentence.

For these reasons, we allow the application, suspend the sentence of the petitioner/appellant and direct that pending hearing of the appeal, the petitioner/appellant, namely, **Sk. Azharuddin @ Sonu**, shall be released on bail upon furnishing a bond of Rs.20,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional Chief Judicial Magistrate, Sealdah, with condition that the petitioner/appellant shall meet with the Officer-in-Charge of Maniktala Police Station once in a fortnight immediately after release and until further orders.

The application for suspension of sentence, being C.R.A.N. 1 of 2019 (Old CRAN 4774 of 2019) and connected application being CRAN 2 of 2020 are, thus, 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.)