

06.09.2021
Court No.30
Item No. 27
Avijit Mitra

CRA No. 442 of 2019
with
IA No. CRAN No. 1 of 2019 (Old No. CRAN 3543 of 2019)
(through video Conference)

In Re:- An application under section 389 of the Code of Criminal Procedure;

And

In Re : Jayanta Maity @ Joyanta Maity
Petitioner/Appellant

Mr. Prabir Kumar Mitra,
Mr. Pinak Kumar Mitra

..... for the Petitioner/Appellant

Mr. Saurav Chatterjee,
Ms. Sayanti Santra

....for the State

This is an application for an order of suspension of sentence and grant of bail pending appeal against an order of conviction and sentence. The petitioner/appellant has been convicted of offences punishable under sections 498A/302 of the Indian Penal Code (in short, IPC).

Mr. Mitra, learned advocate for the petitioner/appellant submits that the appellant had been on bail during trial and he did not misuse such liberty. He was taken into custody after delivery of the judgment impugned and he had already suffered incarceration for more than two years thereafter. There is also no possibility towards early disposal of the present appeal and in view thereof, the appellant's sentence may be suspended and he may be enlarged on bail on any stringent condition.

He argues that there is no perceptible nexus between the appellant and the alleged offence. On the basis of the selfsame evidence on record the appellant had been convicted whereas other two accused persons have been acquitted.

According to Mr. Mitra, the purported dying declaration ought to have been disbelieved by the learned court below since Dr. Panja, PW 20 was a student of E&T of Calcutta Medical College and Hospital and Dr. Ghosh deposed that the stamps beneath the signatures were not given in their presence.

Ms. Santra, learned advocate appearing for the State submits that there are materials on record which clearly reveal the direct involvement of the appellant in the alleged offence. On the basis of the evidence on record the learned Court below has convicted the appellant and at this stage, a different view cannot be taken on the basis of the selfsame evidence on record.

We have heard the learned advocates appearing for the respective parties and have assessed the quality of the evidence recorded by the learned Court below. *Prima facie*, the evidence on record is not so infallible and accurate to clearly establish the guilt against the appellant beyond reasonable doubt. Bearing in mind the principles of law laid down by the Hon'ble Supreme Court in *Kashmira Singh vs. State of Punjab*, reported in (1977) 4 SCC 291 and in *Babu Singh vs. State of M.P.*, reported in (1978) 1 SCC 579 and on an overall assessment of the facts and circumstances involved, we are of the opinion that it would be appropriate to suspend the sentence and to grant bail to the appellant.

For these reasons, we allow the application, being CRAN No. 1 of 2019 (Old No. CRAN 3543 of 2019), suspend the sentence and direct that pending hearing of the appeal, the appellant, namely, **Jayanta Maity @ Joyanta Maity**, shall be released on bail upon furnishing a bond of Rs.10,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Paschim Medinipur with a further condition that the appellant shall meet with the Officer-in-Charge of Pingla Police Station once in a month on and from 20th September, 2021 until further orders.

The application for suspension of sentence, being CRAN No. 1 of 2019 (Old No. CRAN 3543 of 2019) is, thus, disposed of.

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

(Rabindranath Samanta, J.) (Tapabrata Chakraborty, J.)