

02.03.2021
Item No. 04
Ct-1
Saswata /AD

IA NO: CRAN 1 of 2019(Old No.CRAN 3540 of 2019)
in
CRA 446 of 2019
Sahid Khan @ Sheru Khan @ Sheru & Anr.
-vs-
The State of West Bengal

Mr. Sandipan Ganguly, Sr. Adv.
Mr. Sourav Chatterjee
Mr. Tarique Quasimuddin
Mr. Aniruddha Bhattacharyya
... for the appellants/applicants

Mr. Saibal Bapuli, Ld. A.P.P
Mr. Bibaswan Bhattacharya
... for the State

In Re : IA NO: CRAN 1 of 2019(Old No.CRAN 3540 of 2019)

This is an application for suspension of sentence and grant of bail pending appeal against an order of conviction and sentence handed down for offences found to have been punishable under Sections 364 and 302 read with Section 34 of the IPC to two accused persons who are brothers.

We have heard learned Counsel for the applicants/appellants and learned Counsel for the prosecution.

Relying on the material findings of the Court below and the sequence of events as disclosed by the evidence-on-record as assimilated in the judgment impugned in the appeal, learned counsel for the appellants/applicants has pointed out that this is a case where chances of sustaining the order of conviction is extremely minimal. To buttress this position, he pointed out that the accused persons were arrested about a year after the incident on the basis of what he calls as *ipsi*

dixit inputs and supported with the recovery of a weapon from a drain more than fourteen months after the incident.

Learned Counsel further points out that testimony of one person on whom the Court below has relied to concur with the view that the deceased was last seen in the company of the accused persons, is not legal evidence that could be accepted and acted upon. He submits that there is no reliable continuous chain of events sustained through legal evidence to hold that the case stands fortified by circumstantial evidence to sustain the finding of the Court below. He accordingly pleaded that the appellants/applicants may be granted an order of suspension of sentence and be granted bail. It is further submitted that the second appellant has already served more than ten years and the first appellant has served more than three years.

Per contra, learned Counsel for the prosecution submitted that this is a case which, though based on circumstantial evidence, stands on clear finding that the chain of events has been proved without any link being broken in its continuity. He further submitted that the quality of the findings rendered by the Court of first instance is such that it would not be liable to be disturbed by the appellate Court.

On the plea of the appellants/applicants based on the period of sentence already undergone, learned Counsel for the prosecution pointed out that the second appellant had jumped bail and was again brought to trial after ten years.

Learned Counsel for the appellants/applicants, in answer to the submission of learned prosecution regarding one of the

accused persons jumping bail stated that on one posting before the trial Court he did not appear as he was working for livelihood away in Kanpur and that bail may be granted on any condition as this Court may deem appropriate to impose.

Assimilating the contents of the judgment impugned in the appeal and the quality of the findings therein and the sequence of events as was sought to be established by the prosecution, we are of the view that ends of justice would be satisfied if the appellants/applicants are granted bail on terms.

Accordingly, we direct that the appellants/applicants shall be released on bail upon furnishing a bond of ₹10,000/- (Rupees Ten thousand only) each with two solvent sureties of like amount each, one of whom must be a local, to the satisfaction of learned Chief Metropolitan Magistrate, Calcutta, on condition that they shall report to the Officer-in-Charge of the Jorasanko Police Station on the first and third Saturday of every month between 10.00 A.M. and 12.00 Noon without fail and on further condition that the appellants/applicants shall remain within the jurisdiction of Jorasanko Police Station and shall not involve themselves in any incriminating activity in any manner which may amount to an offence punishable under the law and further that the appellants/applicants shall be personally present or be represented before this Court when the appeal is taken up for hearing. If any of the conditions imposed on the appellants/applicants are not complied with or are found to have been breached, order of suspension of sentence, that is

being granted hereby, would be cancelled or stand recalled automatically.

The application being IA NO: CRAN 1 of 2019 (Old No. CRAN 3540 of 2019) is, accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon completion of requisite formalities.

(Thottathil B. Radhakrishnan, CJ.)

(Arijit Banerjee, J.)