

23.08.2021
Court No.30
Item No. 22
Krishnendu
Bail Granted

C.R.A. No. 472 of 2019
With
CRAN No. 1 of 2019 (Old CRAN 3703 of 2019)
(Via video Conference)

In Re:- An application for suspension of sentence under section 389 of the Code of Criminal Procedure arising out of Sessions Case No. 19(3) 2013, Sessions Trial No. 03(6) 2014 ;

And

In Re : **Gita Midday & Anr.**

Petitioners

Mr. Milan Mukherjee, Ld. Sr. Adv.

Mr. Subir Ganguly

Mr. Dibakar Sardar

Mr. Sumanta Ganguly

For the Petitioners

Mr. Saibal Bapuli, Ld. P.P.

Mr. Bibaswan Bhattacharya

For the State

This is an application for suspension of sentence and grant of bail pending appeal preferred against the order of conviction. The petitioners have been convicted under sections 302/498A of the Indian Penal Code and sentenced to life.

Mr. Mukherjee, learned senior advocate appearing for the petitioners submits that both the petitioners were all along on bail and they never misused the privilege of bail during trial showing any misconduct to the conditions granted in the bail. It is further submitted that the learned Court below has reached its conclusion of guilt relying upon the evidence of P.W.5, a minor, whose statement under section 164 of the Code of Criminal Procedure was recorded with a delay of 117 days, without any explanation being offered by the side of the prosecution. There are serious contradictions and infirmities in the evidence, which though

brought to the notice of the learned Trial Judge, but went unredressed.

Mr. Mukherjee further argues that the evidence of P.W.5 is not strong enough to be relied upon keeping in view the incongruities revealed from the testimony of the Investigating Officer. Since there is no immediate possibility towards early disposal of the appeal, the petitioners should be released on bail upon suspending their sentence.

Learned advocate for the State raises objection against the prayer for suspension of sentence submitting that the deceased victim was put to suffer torture and cruelty over a demand of money, which not having been satisfied, the victim was brutally killed by the in-laws members upon administering poison in her mouth. Learned advocate for the State, in his all fairness, has failed to offer any explanation as regards the delay caused in recording the statement of the minor son under section 164 of the Code of Criminal Procedure.

We have heard both sides and considered the strength of the prosecution witnesses, nature and quality of the evidence already adduced in this case.

It is seen that relying upon the same set of evidence, father-in-law and uncle-in-law have been acquitted.

Though there has been allegation of committing torture and cruelty upon the deceased victim but no injury could be detected on the person of the deceased and no container containing poison

could be recovered by the Investigating Officer during investigation.

True it is that both the petitioners are on bail during trial and no misconduct was shown by them during the trial. The conclusion of guilt reached by the learned Trial Court against these two (2) petitioners, in our considered view, may be otherwise explainable in view of the inconsistencies and incongruities revealed in the testimony of the P.W.5 together with the evidence of the Investigating Officer.

Without expressing any opinion on the merits of the case and without deciding the culpability of the petitioners, we are of the considered view that this is a fit case, where we should exercise our discretion by suspending operation of the sentence. More so, there is no immediate possibility towards early disposal of this appeal.

Accordingly, we allow this application, suspend the sentence and direct that pending hearing of the appeal, the petitioners namely, **Gita Midday** and **Rupa Midday @ Rupali**, shall be released on bail upon furnishing a bond of Rs.20,000/- each with two sureties of Rs.10,000/- each, one of whom must be local, to the satisfaction of the learned Additional Chief Judicial Magistrate, Baruipur, South 24-Parganas.

The application for suspension of sentence, being CRAN No. 1 of 2019 (Old CRAN 3703 of 2019) and other applications, being CRAN 2 of 2020 (Old CRAN 1943 of 2020), CRAN 3 of 2020 (Old

CRAN 1944 of 2020) and CRAN 4 of 2020(Old CRAN 1950 of 2020) are disposed of.

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

(Subhashis Dasgupta, J)

(Tapabrata Chakraborty, J)