

24.12.2021
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Allowed

**CRA 504 of 2018
with
CRAN 1 of 2018 (CRAN 3344 of 2018)
(via video conference)**

In Re : An application under Section 389 of the Code of
Criminal Procedure.

And

In Re: Ranjit Roy @ Ranjit Kumar Roy appellant

Ms. Subhasree Patel
Mr. Subir Debnath
Mr. Soham Banerjee
Ms. Roma Roy
Ms. Saini Das

..... for the appellant

Mr. Neguive Ahmed, learned APP
Ms. Zareen N. Khan
Ms. Amita Gour

..... for the State

It is submitted by the learned Counsel appearing for the appellant that there is a clear contradiction between the narration in the F.I.R. and the deposition of sole eye-witness, P.W. 5 with regard to the genesis of the incident. In the F.I.R. it is alleged that P.W. 5 had come with a sharp cutting weapon to assault the appellant, whereupon the appellant assaulted him and his wife resulting in death of his wife. However, deposition of P.W. 5 makes out an entirely different story. In the light of the aforesaid dichotomy, it is contended that the prosecution case is a concocted one and the appellant did not have intention to murder the deceased. Appellant

was on bail during trial and did not misuse his liberty in any manner whatsoever. Presently he is in custody for three years.

Learned Counsel appearing for the State opposes the prayer for bail and submits P.W. 5 is an injured eye-witness who implicates the appellant in the murder of his wife, Sabitri. Postmortem doctor corroborates the ocular version of P.W. 5.

We have considered the materials on record. No doubt the injuries on P.W. 5 as well as the deceased are proved through medical evidence. However, there is a contradiction in the genesis of the incident as narrated in the F.I.R. vis-à-vis deposition of P.W. 5, sole eye-witness. Contents of the F.I.R. gives an impression that P.W. 5 had come to the spot armed with a weapon to assault the appellant. Hence, an arguable case in appeal has been made out in favour of the appellant.

Under such circumstances, as the appellant was on bail during trial and did not misuse his liberty in any manner whatsoever, we are inclined to suspend the sentence imposed upon him and release him on bail.

Under such circumstances, we direct that the appellant shall be released on bail 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-I, Alipurduar, and on condition that he shall appear before the trial court once in a month till disposal of the appeal.

In the event the appellant fails to do so, the trial court shall forthwith intimate such fact to this Court and the department shall

place this matter before the appropriate Bench for necessary order in accordance with law.

The application being CRAN 1 of 2018 (Old CRAN 3344 of 2018) is allowed.

Paper books be prepared within four weeks from the date of receipt of the lower court records.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)