

06.09.2021

Court No.30
rpan/25

IA No.: CRAN No. 1 of 2019 [Old: CRAN 2506 of 2019]
in
C.R.A. No.663 of 2018

In Re : **Anil Das & Anr.**

- Petitioners/Appellants

Dr. Jyotirmoy Adhikary

... for the Petitioners/Appellants.

Mr. Saibal Bapuli,

Mr. Arani Bhattacharyya

... for the State

This is an application for suspension of sentence and grant of bail pending appeal against an order of conviction and sentence passed by the learned Additional Session Judge, 3rd Court, Cooch Behar in Sessions Case no.54/2017 [Sessions Trial No.04(11)2017]. The appellants/petitioners have been convicted of offences punishable under Sections 302/34 of the Indian Penal Code, 1860 (in short, IPC) and sentenced to suffer imprisonment for life with default clause.

Dr. Adhikary, learned advocate appearing for the appellants/petitioners submits that there are inconsistencies in the depositions of the prosecution witnesses. Even after noting such inconsistencies, the learned Court below disregarded the same without any cogent reason. The acts of the appellant herein can be scaled down to an offence under Section 304 of IPC. It would also be explicit from the deposition of the doctor (P.W.10) that the victim was alcoholic and he had no throttling mark over

the neck. In view thereof, the alleged acts of the appellants had not caused the death of the victim.

He further submits that on the basis of the evidence on record, the appellants have been convicted whereas one Kabita Das, who is similarly situated with the appellants, has been acquitted. In view thereof, it cannot be said that the appellants have no chance of success in the present appeal.

He further submits that the appellants were on bail during trial and they have not misused their liberty. However, after conviction they have already suffered incarceration for about three years and there is also no possibility towards early disposal of the present appeal. In the said conspectus, the appellants' sentence may be suspended and they may be enlarged on bail.

Mr. Bapuli, learned Additional Public Prosecutor appearing for the State submits that on the basis of the evidence on record, the learned trial court has already arrived at a finding of guilt against the appellants and as such, at this stage a different view cannot be taken on the basis of the self-same evidence.

We have heard the learned advocates and assessed the quality of evidence, as recorded by the learned court below. *Prima facie*, the said evidence on record is not so infallible and accurate to clearly establish the guilt of the appellants and the appellants, in our view, may be able to demonstrate at the hearing of the appeal that they had no major involvement.

Under such circumstances and 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 without going into the merits of the disputes and the culpability of the appellants, in our opinion, it would be appropriate to suspend the sentence of the appellants and to enlarge them on bail.

For these reasons, we allow the application, being IA No.: CRAN No. 1 of 2019 [Old: CRAN 2506 of 2019], suspend the sentence of the appellants and direct that pending hearing of the appeal, the appellants, namely, **Anil Das** and **Sunil Das** shall be released on bail upon furnishing a bond of `10,000/- each with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Cooch Behar.

The application for suspension of sentence, being IA No.: CRAN No. 1 of 2019 [Old: CRAN 2506 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.)