

13.08.2021
Court No.30
Item No. 20
Avijit Mitra

CRA No. 749 of 2019
with
IA No. CRAN No. 1 of 2020 (Old No. CRAN 249 of 2020)
(through video Conference)

In Re:- An application under section 389(1) of the Code of Criminal Procedure filed arising out of Session Case No.38 of 2014 (Session Trial No. 1(11) of 2014);

And

In Re : Amit Dutta & ors.

Petitioners/Appellants

Mr. Sabir Ahmed,
Mr. Swagata Biswas,
Mr. Mujibar Ali Naskar,

..... For the Petitioners/Appellants

Mr. Rana Mukherjee,
Mr. N.P. Agarwala,
Mr. Subrata Roy

....For the State

This is an application for suspension of sentence and grant of bail pending appeal preferred against an order of conviction and sentence.

Out of 3 (three) petitioners in this case, 2 (two) petitioners (petitioner nos. 1 & 2) have been convicted under Sections 395/397/412 of the Indian Penal Code, with sentence of 10 years, 7 years and 7 years each and fine with default clauses respectively for 3 (three) counts, while petitioner no.3 has been convicted only under Sections 395/397 I.P.C with sentence of 10 years and 7 years and fine with default clauses respectively for 2 (two) heads of the offence.

Mr. Ahmed, learned advocate appearing for the petitioners referring two orders dated 19th July, 2021, and 27th July, 2021 passed by this Court in connection with this appeal submits that two convicted petitioners similarly circumstanced with the present petitioners had already been granted bail upon suspending their respective sentence.

It is also submitted by Mr. Ahmed that in the meantime all the 3 (three) petitioners have suffered incarceration of more than 7(seven) years, and thus they have undergone substantive period of term imprisonment. It is further submitted that early disposal of this appeal is a remote possibility, and in this case petitioners having already suffered substantive period of sentence of more than 7 (seven) years, as against fixed term of imprisonment, already awarded against them, the Court while dealing with suspension of sentence and grant of bail should liberally consider the same. More so, participation of petitioners in conjoint activity of commission of dacoity under Section 395 I.P.C has been rendered doubtful in view of patent contradiction/infirmity contained in testimony of witnesses, which though brought to the notice of the trial court, but went unredressed, and as such there is fair chance of success in this appeal. In such conspectus, petitioners have prayed for bail upon suspension of their sentence.

Mr. Agarwala, learned advocate appearing for the State raising objection against suspension of sentence and grant of bail submits that in this case, there has been recovery of Rs.25 lakhs from petitioner No.1 and Rs.13 lakhs from petitioner No.2, but

there is no recovery as regards petitioner No.3. It is further submitted that there are strong circumstances revealing direct involvement of petitioners in the offence committed, and with the recovery of booty from the petitioner Nos. 1 and 2 and another co-accused, participation of petitioners in the conjoint activity of committing the crime cannot be doubted.

We have heard the submission of both sides. Upon an overall assessment of evidence, it appears that petitioner No.3 is similarly circumstanced with **Abhijit Baidya**, and **Goutam Barui**, who had already been granted bail, and against whom there was no recovery. Recovery alone makes the only distinction so far as the petitioner Nos. 1 and 2 are concerned, and for that reason petitioner Nos. 1 and 2 have undergone custody for more than 7 (seven) years against a term imprisonment already awarded. Conviction in this case has been reached taking into account circumstantial evidence. Upon consideration of circumstances presented by prosecution regarding significant participation of petitioners in conjoint activity of committing the crime, we are of considered view that such circumstances are not sufficient enough to be not otherwise explainable, than the evidence of PW-4, an eye-witness to the occurrence.

Since there is no possibility towards early disposal of the present appeal, under such circumstances, without expressing any opinion on the merits of the case and the culpability of the petitioners, in our considered view, it would be appropriate to suspend the sentence and grant bail to the petitioners.

For these reasons, we allow this application, suspend the sentence and direct that pending hearing of the appeal, the petitioners/appellants, namely, **Amit Dutta, Debasish Seal @ Kalu and Santu Das @ Santa Das** shall be released on bail upon furnishing a bond of Rs.20,000/- with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Chief Metropolitan Magistrate, Calcutta with condition that the petitioners shall meet with the Officer-in-Charge, Burrabazar Police Station once in a fortnight until further orders.

Accordingly, the application for suspension of sentence, being CRAN No. 1 of 2020 (Old No. CRAN 249 of 2020) is disposed of.

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

(Subhasis Dasgupta, J.)

(Tapabrata Chakraborty, J.)