

Form No.J(1)

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present:

The Hon'ble Justice Tirthankar Ghosh

**C.R.A.(SB) 11 of 2022
With
CRAN 1 of 2022**

**Narej Sk.
versus
The State of West Bengal**

For the Appellant : Mr. Pratip Kumar Chatterjee.

For the State : Mr. Saswata Gopal Mukherjee, Ld.P.P.,
Mr. Saryati Datta.

Heard On : 02.08.2022.

Judgement On : 02.08.2022.

Tirthankar Ghosh, J. :

An application has been taken out for bail in connection with Criminal Appeal being CRA (SB) 11 of 2022.

I have considered the materials appearing in evidence and the period of detention of the present appellant which is almost three years

as the appellant was arrested on 9th August, 2019 and since then he is in custody.

The genesis of the case relates to Bharatpur G.D.E. No.465 dated 09.08.2019 which was at the instance of Sub-Inspector, Ganesh Bhattacharyee of Bharatpur Police Station who received an information that a person was waiting at Sijgram Morh PS-Bharatpur, Murshidabad to deliver forged Indian currency notes to someone in lieu of money. Accordingly a team was created with the permission of the superior officers and Sub Inspector Ganesh Bhattacharyee along with A.S.I. Sahadat Hossain, constable Krishnapada Sarkar and constable Karan Soren left for Sijgram Morh. Two independent witnesses were requested to be present, namely, Dalim Sk and Jarman Khan. After reaching the spot, it was found that a person was standing and waiting causally. However, seeing the police party, he tried to flee away but on being chase he could be apprehended and detained. The person was given option for searching the officers which he denied and subsequently on his search 10 Indian forged currency notes of Rs.2,000/- denomination were recovered from right side pocket of his trouser. After the seizure list was prepared which was signed by the two independent witnesses and the entire process of search, seizure, packet and label and seal were made in between 20.05 hours to 20.45 hours, a written complaint was thereafter

lodged with the Officer-in-Charge of Bharatpur Police Station against the accused person and accordingly, Bharatpur P.S. Case No.217/19 dated 09.08.2019 was registered for investigation under Sections 489B/489C of the Indian Penal Code against the accused/appellant Narej Sk.

On conclusion of investigation, charge-sheet was submitted in connection with the said case on 30.09.2019 under Sections 489B/489C of the Indian Penal Code. The charge was thereafter read over to the accused person who pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied upon six witnesses, namely, PW 1, Sub-Inspector of Police, Ganesh Bhattacharyee-complainant; PW 2 Jarman Khan; seizure list witness PW 3 Dalim Sk.; seizure list witness PW 4 ASI Rajen Biswas who received the written complaint from S.I. Ganesh Bhattcharyee; PW 5 SI Asoke Kumar Mondal is the Investigating Officer of the case and PW 6 Naveen Kumar is the expert who identified the report prepared at Bharatiya Reserve Bank Note Mudran (P) Limited.

The prosecution also relied upon eight documents which were marked as exhibits. Exhibit 1 is the FIR, exhibit 2 is the seizure list, exhibit 3 is the label of fake Indian currency note, exhibit 4 is the envelope, exhibit 5 is the arrest/inspection memo, exhibit 6 is the formal

FIR, exhibit 7 is the rough sketch map with index and exhibit 8 is the report of the expert.

An analysis of the evidence which has surfaced in course of investigation reflects that there were two independent witnesses whose evidence was restricted to seizure, three police witnesses and one expert. From the evidence of five witnesses what is proved is 10 fake Indian currency notes of Rs.2,000/- denomination being in possession of the present accused/appellant. There are no materials which have been collected or any evidence adduced to show that either the same was to be circulated or would be passed to other persons. So far as P.W.6 is concerned, he has identified the report of the expert which specifically states that the fake currency notes so seized are "low quality counterfeit notes".

Having regard to the overall evidence which has surfaced in the present case, I find that a case for possession in respect of fake Indian currency notes have been made out, but no case for trafficking has been made out in the evidence so deposited before the learned trial court. Accordingly, I am of the opinion that the provisions of Section 489B of the Indian Penal Code is not attracted in the present case. So far as the conviction and sentence so imposed under Section 489B of the Indian Penal Code is concerned, the same is set aside. Now, so far as the

provisions of Section 489C of the Indian Penal Code is concerned, the learned trial court has rightly arrived at its finding of guilt in respect the present appellant and I do not find any reason to interfere with the same. However, having regard to the fact that the appellant is in custody since 9th August, 2019 since the First Information Report was registered and almost for a period of three years he is in custody, I am of the opinion that the sentence so imposed should be reduced to the period which has already been undergone by the present appellant.

So far as the fine amount is concerned, the same is not interfered with. If the appellant deposits the fine amount, he should be released forthwith in connection with Sessions serial no.156/19, Sessions Trial no.02(12)19 arising out of Bharatpur PS Case No.217 of 2019. Additionally, the appellant would furnish a good behaviour bond under Section 106 of the Code of Criminal Procedure before the learned Executive Magistrate immediately after his release. The said bond would be for a sum of Rs.10,000/- with two registered sureties and would be valid for a period of two years.

With the aforesaid observations, CRA (SB) 11 of 2022 is partly allowed.

Pending applications, if any, are consequently disposed of.

The department is directed to send back the lower court records to the respective courts within a period of seven days.

On perusal of the records, it reflects that the appellant is in custody for about three years. The lower court records have reached this Court and has been tagged along with the records. Having regard to the period of detention of the appellant and that the evidence is restricted only to six witnesses and eight documents, preparation of the paper book is dispensed with in this appeal.

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

(Tirthankar Ghosh, J.)

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