

01.03.2022
Sl. No.12
akd
[Allowed]

C. R. A. N. 1 of 2020 [via video conferencing]
in
C. R. A. 87 of 2020

In Re : An application for bail under Section 389 of the Code of Criminal Procedure, 1973 filed on 27.11.2020 :

A N D

In Re : Himat Sahuji & Ors. ... Appellants [in jail]

Mr. R. C. Guchhait
Mr. Safikul Mandal

... .. for the appellants

Mr. Neguive Ahmed .. Ld. Addl. Public Prosecutor
Ms. Amita Gaur

... .. for the State

It is submitted on behalf of the appellants that they were on bail during trial and did not misuse their liberty in any manner whatsoever. It is further submitted evidence of the eyewitnesses are not corroborated by other evidence on record. Sentence is one of term imprisonment and the appellants have undergone two years of imprisonment.

On the other hand, learned Additional Public Prosecutor opposes the prayer for bail and submits that the eyewitnesses have implicated the appellants in the crime.

We have considered the evidence on record. PW10 states that the deceased was assaulted by Hasibul, Khushibul and Gulzar. His deposition does not corroborate the manner of assault upon the victim as narrated by other witnesses. Hence, the appellants have made out an arguable case in appeal. Sentence is one of term imprisonment and no exceptional aggravating circumstance appears from the materials on

record. Under such circumstances and in view of the law declared in ***Bhagwan Rama Shinde Gosai & Ors. vs. State of Gujarat***¹, we are inclined to suspend the sentence imposed upon the appellants and enlarge them on bail.

Accordingly, the appellants namely, **(1) Himat Shauji, (2) Israf Sahuji & (3) Iniar Sahuji**, be released on bail upon furnishing a bond of Rs.20,000/- (Rupees Twenty thousand) only each, with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional Chief Judicial Magistrate, Kalna, Purba Burdwan subject to condition that the appellants shall appear before the said Magistrate once in a month till the disposal of the appeal.

In the event they fail to do so, the learned Magistrate shall forthwith report such fact to this Court and the Department shall place the matter before the appropriate Bench for necessary orders.

The application being CRAN 1 of 2020 is disposed of.

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

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

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)

¹ (1999) 4 SCC 421