

01.02.2022

Sl No. 01

Ali

Ct. No. 42

**IA No.: CRAN/2/2022
C.R.A. 561 of 2014
(Via Video Conference)**

In the matter of : Sanjay Paul

... Petitioner

Mr. Sabir Ahmed, Adv.,
Mr. K.K. Paul, Adv.

....For the petitioner.

Ms. Faria Hossain, Adv.,
Mr. Sandip Chakroborty, Adv.

....For the State

This is an application for appropriate order filed by the appellant, namely Sanjoy Paul on 11th January, 2022.

The appellant was charged in connection with Sessions Trial No. 05(July) of 2012 arising out of Sessions Case No. 02 of 2012 under Section 498A/482/307 of the Indian Penal Code. On conclusion of trial he was convicted under the offence of Section 448/324/307 of the Indian Penal Code and was sentenced to suffer imprisonment for three years with fine of default clause for committing offence under Section 324 of the IPC and imprisonment for one year for the offence under Section 448 of the IPC with fine of default clause.

Being aggrieved by and dissatisfied with the said judgement and order, the petitioner has preferred the instant appeal.

In the instant appeal an application under Section 389 of the Code of Criminal Procedure was filed by the petitioner. By an order dated 17th April, 2014, a co-ordinate Bench of this Court was pleased to allow the application for suspension of sentence and directed the petitioner to be released on bail pending hearing of the appeal.

However, subsequently the petitioner failed to take any step at the time of hearing of the appeal and by an order dated 14th December, 2021 this Court cancelled the order of suspension of and sentence and granted bail in favour of the appellant vide order dated 25th September, 2014.

Accordingly, the accused/appellant was arrested to suffer conviction under Section 324/448 of the IPC.

However, prior to his arrest the petitioner came up with the instant application on 11th January, 2022 with a prayer that the matrimonial dispute between the appellant and private respondent No. 2 has been amicably settled during the pendency of the appeal and appropriate order may be passed in the instant appeal after recalling the order dated 14th December, 2021.

Mr. Sabir Ahmed, learned advocate appearing for the appellant submits that Section 389(1) of the Code of Criminal Procedure does not create any bar for the appellant to file successive application for suspension of sentence and bail. It is also submitted by Mr. Ahmed that on the ground of failure on the part of the appellant to take step in the appeal. If the order of suspension and sentence and bail are

cancelled, the appellant cannot file any application under Section 437/439 of the Code of Criminal Procedure. At the same time by recalling an order of suspension of sentence, the Court does not pass any order in terms of Section 439 (2) of the Code of Criminal Procedure.

Coming to the factual position of the case, it is submitted by Mr. Ahmed that the dispute between the appellant and respondent No. 2 arises out of matrimonial discord. Subsequently, the dispute has been amicably settled and both of them are residing together as husband and wife. It is further stated by Mr. Ahmed that subsequent to the settlement between the parties, the respondent No. 2 gave birth the second child of the appellant, considering all such circumstances necessary order may be passed in the instant appeal.

Suspension of sentence pending the appeal and release of appellant on bail is special provision contained in Section 389 of the Code of Criminal Procedure. During the trial of the case, the appellant was convicted and sentenced of imprisonment for three years for committing offence under Section 324 of the IPC. In terms of sub-Section (3) of Section 389 the Trial Court by which the appellant was convicted is empowered to grant interim bail on the ground that he intends to file an appeal. In such case the appellate Court shall only confirm the interim bail during pendency of the appeal.

If such order is cancelled passed under Section 389 of the IPC, the order of suspension of sentence is cancelled meaning thereby execution of sentence shall start operating since the accused/appellant was arrested to suffer sentence.

Now the respondent No. 2 being the wife of the appellant has filed an application for appropriate order as confirmed the application filed on behalf of the appellant for passing appropriate order on the ground that the dispute has been amicably settled.

With regard to the maintainability of the application, it is submitted by the learned Public Prosecutor in-charge that the dispute arose as a result of matrimonial discord. Such dispute has been amicably settled by and between the parties and they are residing together, she invites the Court to pass appropriate order having the inherent power of discord.

In view of such submission made by the learned counsel for the parties and considering the fact that the dispute has been amicably settled between the parties, the accused be released on bail under the same terms and conditions vide order dated 25th September, 2014. The order of granting bail dated 25th September, 2014 is revived by recalling order dated 14th December, 2021.

Since an offence under Section 324/448 of the IPC can be compounded by the Court of Magistrate. However, the trial was conducted by the learned Additional Sessions Judge, Bolpur at Birbhum.

The parties are directed to file the petition for amicable settlement of the dispute in the Trial Court within 15 (Fifteen) days from the date of this order and upon filing of such application, the learned Trial Judge shall dispose of the same in accordance with law.

The Lower Court Record be sent forthwith to the learned Court below. On recording of compounding of offence, the learned Court below is directed to transmit the record before this Court for passing appropriate order.

(Bibek Chaudhuri, J.)