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**CRA (SB) 56 of 2023
IA NO: CRAN 2 of 2023**

**Manika Halder @ Sarkar & Anr.
versus
State of West Bengal**

Mr. Sourav Chatterjee,
Mr. Soumyajit Das Mahapatra,
Ms. Madhuri Sinha. ... for the appellant.

Mr. Arijit Ganguly,
Mr. Kaushik Kundu ... for the State.

1. This appeal is directed against the judgment and order of conviction dated 13th March, 2023 passed by learned Assistant Sessions Judge, 1st Court, Krishnagar, Nadia in connection with Sessions Case No. 14 (09) of 2015, Corresponding ST I (Sep) 2018 arising out of Krishnaganj Police Station Case No. 46 of 2012 under Sections 363/365/120B of the Indian Penal Code, whereby learned Judge found both the appellants guilty of committing offence under Sections 366/370/34 of Indian Penal Code and they were sentenced to suffer rigorous imprisonment for 5 years (five years) with fine of Rs.3000/- (three thousand), in default further rigorous imprisonment for 3 (three) months for the offence punishable under Section 366/34 of the Indian Penal Code. They were further sentenced to suffer rigorous imprisonment for 7(seven) years with fine of Rs.3000/- (three thousand), in default rigorous imprisonment for further

3(three) months each for the offence under Sections 370/34 of the Indian Penal Code.

2. Mr. Sourav Chatterjee, learned counsel appearing on behalf of the appellants has raised an issue of maintainability of the order of sentence on the ground that both the appellants were found guilty of committing offence under Section 366 of the Indian Penal Code without framing any specific charge to that effect. In support of his contention he relied to the provision of Section 216 of the Code of Criminal Procedure, whereby learned Judge was empowered to alteration or addition of charge at any stage of trial.
3. Mr. Kaushik Kundu, learned counsel appearing on behalf of the State/respondent has conceded the argument advanced by Mr. Chatterjee and alternatively submitted that no prejudice was caused to the appellants by the order of sentence under Section 366 of the Indian Penal Code without framing charge, in terms of quantum of sentence.
4. On careful perusal of the record, I find that after commitment of the case, learned Judge framed charge against both the appellants under Section 363/370/34 of the Indian Penal Code. But after evaluation of evidence adduced on behalf of the prosecution ultimately learned Judge found both the appellants guilty of committing offence under Section 366 of the Indian Penal Code and accordingly recorded the order of sentence.
5. It is needless to mention that the offence prescribed under

Section 366 is more grievous with different ingredients than that of 363 of the Indian Penal Code. Proposition of law is that learned Judge ought to have altered the charge and after giving an opportunity of hearing to the appellants before finding them guilty of committing of offence under Section 366 of the Indian Penal Code.

6. Given facts and circumstances, I am not agreeable with Mr. Kundu on the issue of “No prejudice caused to the appellants”.
7. In this trying situation, no option is left to this court but to set aside the judgment and order of conviction dated 13th March, 2023 passed by the learned Assistant Sessions Judge, 1st Court, Krishnagar, Nadia and remanded the matter for hearing afresh in accordance with law.
8. Learned Sessions Judge may deal with the matter by himself and if not so he may transfer the case to any court other than the court dealt with the matter earlier.
9. Learned Trial Judge while deciding the matter afresh either to proceed with the trial de novo, on the basis of charge already framed or upon considering the materials, he may alter the charge within the meaning of Section 216 of the Code of Criminal Procedure.
10. Choice is absolutely with the learned Trial Judge, as I am not expressing any opinion in this regard. Learned Judge is also requested to dispose of the matter as expeditiously as possible preferably within six months from the date of receipt

of the record.

11. It is reported that original record has already been received by this court. Department is directed to send back the record at once.
12. From the record, it appears that appellant No.2, Shankari Adhikary @ Sankari Adhikary is already on bail by this court invoking Section 389 of the Code of Criminal Procedure but appellant no.1, Manika Halder @ Sarkar is in custody.
13. Given facts and circumstances, I allow the prayer for bail of appellant no.1, Manika Halder @ Sarkar subject to furnishing bond of Rs.30,000/-(thirty thousand) with two sureties of Rs.15,000/- each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Krishnagar, Nadia and on further condition to appear before the court on every day fixed for trial and shall not leave her place of resident at Village: Veriapara, P.O: Veriapara, P.S: Krishnaganj, Nadia, Pin 741402, without permission of the Trial Judge.
14. Appellant No.2, Shankari Adhikary @ Sankari Adhikary is allowed to remain on bail already granted under Section 389 of the Code of Criminal Procedure subject to further condition to appear before the court on every day fixed for trial and shall not leave her place of resident at Village: Veriapara, P.O: Veriapara, P.S: Krishnaganj, Nadia, Pin 741402, without permission of the Trial Judge.
15. In case of any violation of any of the conditions, bail order

shall stand cancelled automatically without further reference to this court.

16. With the aforesaid observation, the appeal being CRA (SB) 56 of 2023 along with CRAN 2 of 2023 stand disposed of.
17. All parties to this appeal shall act on the server copy of this order downloaded from the official website of this Court.
18. Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Bibhas Ranjan De, J.)