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CRA (SB) 147 of 2023

**Badal Roy
Vs.
State of West Bengal**

Mr. Uday Sankar Chattopadhyay.
Ms. Trisha Rakshit,
Ms. Rajashree Tah,
Mr. Aiswarya Datta.

... for the appellant.

Mr. Saswata Gopal Mukherjee,
Mr. Sandip Chakraborty,
Mr. Saryati Dutta ... for the State.

1. This is an appeal under Section 374(2) read with Section 375(b) of the Code of Criminal Procedure, 1973 assailing the order of sentence dated 19.07.2023 passed by the learned Additional Sessions Judge, 3rd Court, Barasat, North 24 Parganas in connection with Sessions Case No. 98 of 2023 corresponding to G.R. No. 3439 of 2022 in connection with Deganga Police Station Case No. 626 of 2022 dated 02.10.2022 under section 14A of the Foreigners Act, 1946.
2. Mr. Uday Sankar Chattopadhyay, learned counsel appearing on behalf of the appellant by referring to Section 375(b) of the Code of Criminal Procedure, submitted that appellant can file an appeal with regard to extent of sentence or legality thereof.
3. It is further submitted that appellant pleaded guilty and he wanted to return his country for meeting his

parents.

4. Before parting Mr. Chattopadhyay has submitted that the appellant is a sick person.
5. In opposition to that, learned advocate Mr. Sandip Chakraborty, appearing on behalf of the State has submitted that there is nothing in the grounds mentioned in this appeal with regard to the legality of the sentence within the meaning of Section 375(b) of the Code of Criminal Procedure.
6. From the record, I find that appellant, Badal Roy was produced from judicial custody on 19.07.2023 and pleaded guilty of committing offence punishable under Section 14A of the Foreigners Act at the time of consideration of charge and at the time of hearing on the point of sentence, convict/appellant submitted that he was a sick person and he would never come back to the India for treatment illegally, if released and he prayed for mercy before the learned Judge.
7. Before recording the order of sentence, learned Judge returned his finding as follows:

“The provision of Foreigner’s Act provides for minimum punishment and that has to be awarded. Though, the convict is a sick person and had come to India for treatment under law, he cannot be given mercy without inflicting the minimum punishment.”

8. In spite of that, learned Judge imposed a sentence to suffer rigorous imprisonment for three (03) years and to pay a fine of Rs.30,000/-, in default, to suffer further simple imprisonment for six (06) months.
9. Regard being had to the all facts and circumstances, I have no hesitation to reduce the sentence of imprisonment from a period of three (03) to imprisonment for two (02) years and also to pay fine of Rs.10,000/- instead of Rs. 30,000/-, in default, to suffer imprisonment for two(02) months.
10. After serving out the sentence of two (02) years appellant would deposit fine amount and all necessary steps should be taken for his push back to his own country immediately thereafter.
11. In the premises set forth above, Criminal Appeal CRR (SB) 147 of 2023 stands disposed of.
12. Pending application, if there be any, also stands disposed of.
13. All parties to this appeal shall act on the server copy of this order downloaded from the official website of this Court.
14. Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Bibhas Ranjan De, J.)