

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side
Present:
The Hon'ble Justice Biswaroop Chowdhury
CRR 4 of 2024
Hassan Mia
VERSUS
The State of West Bengal

For the petitioner: Mr. Arijit Ghosh, Adv.

For Opposite party no. 1: Mr. Aniruddha Biswas, Adv.
Mr. Arjun Choudhury, Adv.,

Last heard on: April 12, 2024

Judgment on: April 25, 2024

Biswaroop Chowdhury, J

This application under Section 482 CrPC is directed against the Order dated 21.12.2023 passed by Learned Sessions Judge Alipurduar in Criminal Appeal 37/2023 rejecting the prayer for bail made by the Petitioner.

The facts of the case in brief is that on 04.02.2023 the forest officer while on patrolling duty received information regarding the present petitioner carrying Hill Maynas (schedule species) with himself by a motorbike bearing no. WB-70A-4293 near Paglabazar Marakhata. Near the Paglabazar area, the forest officer identified and arrested the accused and seized all articles including a motorbike and seven (07) Hill Maynas from his person. The present petitioner was forwarded before the Learned Court of Additional Chief Judicial Magistrate, Alipurduar on the very same day and a case was registered as CR

Case No. 75 of 2023. On 27-03-2023 Prosecution Report was received against the Petitioner/accused person under Section 50 and 51 of the Wild Life protection Act 1972 and the matter was transferred to Learned Judicial Magistrate 3rd Court Alipurduar. Trial was held before the Learned Magistrate and evidence was adduced. On completion of trial the petitioner was convicted of the offence punishable U/S 51(1) of the Wild Life (Protection) Act 1972 for committing offence under sections 9/39(a)/39(b)/44/49 of the Wildlife (Protection) Act 1972 and sentenced to suffer Rigorous Imprisonment for 3(three) years along with fine of Rs. 10,000/- in default of payment the petitioner to undergo further imprisonment for 1(one) month. The petitioner being aggrieved by the order of conviction preferred an appeal before Learned District and Sessions Judge Alipurduar being CRA No. 37 of 2023 which is pending along with an application for bail. The Learned Sessions Judge by Order dated 21.12.2023 was pleased to reject the application for bail filed by the petitioner.

Learned Sessions Judge while rejecting the prayer for bail made the following observation.

‘On perusal of the impugned judgment, I find that, Prima facie, the Learned Trial Court has passed the reasoned judgment and there is nothing on record to suggest, at this stage that the accused has fair chance of acquittal. At this stage I do not find any substance to satisfy myself that the conviction is prima facie not sustainable. So far the merit of the case is concerned evidence adduced by both the parties can be re-appreciated at the time of hearing of the

present appeal and the appellant shall always be at liberty to highlight the lacuna and loopholes if any of the prosecution at the time of hearing of the appeal. The mere submission of the Ld. Counsel for the appellant that the convict never misused the liberty granted by the Court earlier would not suffice to entitle him to get the benefit of bail in the appeal stage.’

The petitioner being aggrieved by the order passed by Learned Sessions Judge in CRA No – 37 of 2023 has come up with the instant revisional application.

It is the contention of the petitioner that the Learned Judge in the Court below failed to appreciate the facts and circumstances of the case and also erred in law and passed the impugned judgment and order which is liable to be set aside. It is further contended that after closure of the prosecution case the Petitioner was purportedly examined under Section 313 of the Code of Criminal Procedure 1973 and Learned Judicial Magistrate 3rd Court Alipurduar was pleased to fix a date for argument. Learned Advocate for the petitioner on 24/11/2023 prayed for time on the ground of illness and due to pressure upon the learned advocate the same was not pressed. The petitioner was earlier arrested in another case being NGR. Case No. 7555 of 2023, and was produced before the Learned Chief Judicial Magistrate Alipurduar on 24/11/2023 and Learned Judicial Magistrate 3rd Court Alipurduar directed the GRO to produce the petitioner immediately.

Learned Judicial Magistrate 3rd Court Alipurduar was pleased to observe that no one turned up for argument in the case, and closed the argument of

the petitioner and on the self same day delivered the judgment, convicted the petitioner and sentenced him accordingly. It is also contended that the Learned Judge ought to have allowed the petition for bail under Section 389 of the Code of Criminal Procedure especially when the sentence is for three years.

Heard Learned Advocate for the petitioner and Learned Advocate for the opposite party State of West Bengal. Perused the petition filed and materials on record. Learned Advocate for the petitioner submits that no special appointment was given to the Learned Advocate who conducted the case on behalf of State of West Bengal. Learned Advocate further submits that the petitioner is in custody for a long period and his prayer for bail be considered.

Learned Advocates for the opposite party submit that there are serious allegations against the petitioner and the petitioner may not be released on bail and the appeal can be disposed of expeditiously. Learned Advocate relies upon the following two decisions.

1. **Omprakash Sahni VS Jai Shankar Chowdhury and Anr** e.t.c
(Criminal Appeal Nos. 1331-1332 of 2023. Reported in AIR-2023. S.C. P. 2202
2. **Preet Pal Singh VS State of Uttar Pradesh and Anr** CRLA NO 000520-000520/2020 reported in AIR – 2020 S.C. P-3995.

Upon hearing the Learned Advocates and upon perusing the materials on record it appears that although the order of conviction and sentence is well reasoned but on the date of argument none appeared for the petitioner/accused on repeated calls. As the petitioner was in custody with

regard to another NGR Case No. 7555 of 2023 there was no scope for the petitioner to call his Learned Advocate or the Junior of the said Advocate if any or to take any necessary steps in this regard. Thus it was reasonable for the Learned Trial Court to refer the matter to the District Legal Service Authority to engage an Advocate to defend the petitioner and to make arguments. As this was not done there was no scope for the petitioner to make arguments. Although after the sentence was passed a bail petition was filed but the same was rejected by the Learned Trial Court on the ground that sentence of rigorous imprisonment of 3(three) years has been passed. Now with regard to the merits of the order of conviction passed by Learned Trial Court detail examination is not necessary at this stage, as appeal is pending but the validity of rejection of bail petition by the Learned Trial Court and Learned Appeal Court should be considered.

Before proceeding further to decide on the issues, at the very outset it is necessary to consider the quantum of punishment imposed on the petitioner and the sentence already undergone, and the relevant provisions regarding grant of bail in such a case.

In the instant case the petitioner was on bail and is sentenced to suffer rigorous imprisonment for 3 (three) years and to pay a fine of Rs. 10,000/- (Rupees Ten Thousand) only in default to suffer further imprisonment of the same nature i.e. for a term of 01(one) month under Section 248(2) of the Code of Criminal Procedure. As there is no specific provision with regard to grant of bail in case of conviction upto three years in an offence under Section 51 of the

Wildlife (Protection) Act 1972, Section 389(3) of the Code of Criminal Procedure should apply.

Section 389(3) of the Code of Criminal Procedure provides as follows:

Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal the Court shall-

- i) Where such person being on bail is sentenced to imprisonment for a term not exceeding three years or
- ii) Where the offence of which such person has been convicted is a bailable one and he is on bail,

order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1) and the sentence of imprisonment shall so long as he is so released on bail be deemed to be suspended.

Thus upon plain reading of sub-section 3 of Section 389 of the Code of Criminal Procedure it will appear that when a person is convicted and sentenced upto a period of 3 years in the normal course he should be released on bail for preferring an appeal. However the bail prayer may be rejected if there are special reasons. In the instant matter although the Petitioner was sentenced to imprisonment for 3 years along with fine of Rs 10,000/- and in default further imprisonment for one month the Learned Trial Court rejected the prayer for bail of the petitioner on the ground that the Petitioner is sentenced to imprisonment for a period of three years.

The Learned Trial Court failed to take into consideration that a convicted person when sentenced to a term not exceeding three years has a right to pray for bail to prefer an appeal and the Court which passed the order of conviction shall release the convicted person on bail unless there are special reasons for refusing. The Learned Trial Court refused the bail prayer of the Petitioner without citing special reasons. Upon perusal of the order of Learned Appellate Court it appears that although the Learned Appellate Court passed a reasoned order refusing the bail prayer of the petitioner/appellant but nowhere the Learned Judge addressed himself on the Provision contained in section 389(3) of the Code of Criminal Procedure Code and neither took into consideration the order of rejection of bail by the Learned Trial Court ignoring the provision contained in Section 389(3) CrPC.

Now with regard to the decisions of the Hon'ble Apex Court in the case of Omprakash Sahni (Supra) and Preet Pal Singh (Supra) the said decisions do not apply to the facts of the case, as in the case of Omprakash Sahni the accused person was sentenced to life imprisonment for being convicted U/S 302 IPC, and in the case of Preet Pal Singh the accused person was sentenced to life imprisonment for being convicted under Section 304B IPC and for 3 years for being convicted U/S 498A IPC for 3 years for offence under Section 406 IPC and for 5 years for offence under Section 3 of the Dowry Prohibition Act. Thus the nature of offence and the sentence passed in the two cases relied upon is different from this case. In the instant case the accused/Petitioner is convicted under Section 51(1) of Wild Life (Protection) Act for committing

offence under Section 9/39(a)/39(d)/44/49B of the said Act and sentenced to imprisonment for 3 years along with fine and in default further imprisonment of one month. However for the sake of clarity the decisions relied upon by the Learned Advocates is discussed hereinbelow.

In the case of Omprakash Sahni (Supra) the Hon'ble Supreme Court observed as follows:

'23. The Principle underlying the theory of criminal jurisprudence in our country is that an accused is presumed to be innocent till he is held guilty by a court of the competent jurisdiction. Once the accused is held guilty, the presumption of innocence gets erased. In the same manner if the accused is acquitted, then the presumption of innocence gets further fortified.

24. From perusal of Section 389 of the CrPC, it is evident that save and except the matter falling under the category of sub-section 3 neither any specific principle of law is laid down nor any criteria has been fixed for consideration of the prayer of the convict and further having a judgment of conviction erasing the presumption leaning in favour of the accused regarding innocence till contrary recorded by the court of the competent jurisdiction, and in the aforesaid background there happens to be a fine distinction between the prayer for bail at the pre-conviction as well as the post, conviction stage, viz Sections 437, 438, 439 and 389(1) of the CrPC.'

In the case of Preet Pal Singh(Supra) the Hon'ble Supreme Court observed as follows:

‘36 There is a difference between grant of bail under Section 439 of the CrPC in case of pre-trial arrest and suspension of sentence under Section 389 of the CrPC and grant of bail, post conviction. In the earlier case there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence and the courts may be liberal depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception as held by this Court in *Datraram Singh V State of UP. and Anr.*(Supra). However in case of post conviction bail, by suspension of the operation of sentence there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the Court considering an application for suspension of sentence and grant of bail is to consider the Prima-facie merits of the appeal coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence and this strong and compelling reason must be recorded in the order granting bail as mandated in Section 389(1) of the CrPC.’

The Hon’ble Supreme Court further observed as follows:

‘26. Section 389 provides that, pending any appeal by a convicted person, the Appellate Court may for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against, be suspended, and also if he is in confinement, that he be released on bail of course, in view of the mandate of Section 389(3) of the CrPC, the Principles are

different in the case of sentence not exceeding three years and/or in the case of Bailable offences. In this case, of course, none of the offences for which the Respondent No.2 has been convicted are bailable. Moreover the Respondent No.2 has, inter alia, been given life imprisonment for offence under Section 304B of the IPC and imprisonment for five years for offence under Section 3 of the Dowry Prohibition Act.’

Thus upon perusal of the decisions relied upon by the Learned Advocate for the opposite party it is clear that while granting bail by suspending sentence under Section 389(1) CrPC the appeal Court must record strong and compelling reason. The endeavor on the part of the court thereof should be to see as to whether the case presented by the Prosecution and accepted by the Trial Court can be said to be a case in which ultimately, the convict stands for fair chances of acquittal.

Upon further perusal of para-4 of the judgment of Omprakash Sahni(Supra) and para 26 of the judgment of Preet Pal Sing(Supra) it will appear that the principles of considering bail application under Section 389(3) CrPC is different and exceptional where the sentence of imprisonment does not exceed three years, as observed by the Hon’ble Apex Court.

Thus upon considering the provisions of Section 389(3) of the Code of Criminal Procedure and the judicial decisions relied upon and the order of rejection of bail passed by both Learned Trial Court and Learned Appellate Court this Court is of the view that both the Learned Courts ignored the provision of Section 389(3) of the Code of Criminal Procedure while rejecting

prayer for bail made by the petitioner. Thus the Orders cannot be sustained and the same should be set aside.

Although after setting aside order of rejection for bail in exercise of power under Revision the usual procedure is to remit the matter for re-consideration by the appellate court but considering the fact that the petitioner has already undergone 4 months of sentence passed by the Learned Trial Court remitting the matter back to the Appellate Court for reconsideration of the bail application will further delay the matter. As the matter is already heard and facts of the case considered along with relevant provisions of law including section 389(3) CrPC this Court is of the view that the sentence of imprisonment awarded to the Petitioner in CR. Case No – 75 of 2023 by Learned Judicial Magistrate 3rd Court at Alipurduar should be suspended and the petitioner should be released on bail.

Hence this Revisional Application is allowed. Order dated 21/12/2023 passed by Learned District and Sessions Judge Alipurduar in Criminal Appeal 37/2023 is set aside. The sentence of Imprisonment awarded to the Petitioner by Learned Judicial Magistrate 3rd Court Alipurduar in CR. Case No – 75 of 2023 is suspended till the disposal of the Criminal Appeal 37/2023 pending before Learned District and Sessions Judge Alipurduar. The Petitioner be released on bail with 2 sureties of Rs. 10,000/- each one of which must be local, subject to the satisfaction of Learned Chief Judicial Magistrate Alipurduar. The petitioner while on bail shall attend appellate court once in every month irrespective of whether date is fixed for hearing of the appeal, and

obtain an acknowledgement from the office of the said court. This application stands disposed.

(Biswaroop Chowdhury,J)