

03.05.2024
SL No.2
Court No.1
(gc)

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Criminal Revisional Jurisdiction**

CRA (SB) 7 of 2024

In the matter of: Maruf @ Kakali Hijra @ Kokoull @

Nayantara & Ors.

Mr. Kallal Ghosh,
Mr. Kishan Sah
Mr. Rakesh Gupta
Mr. Utpal Dutta
Mr. Rajkumar Gupta
Mr. Bhanusingha Sarkar

...for the Appellants.

Mr. Aditi Shankar Chakraborty, Ld. APP
Mr. Arjun Chowdhury

...for the State

1. This is an application in terms of Section 375 of the Code challenging the judgment and order dated 24.11.2023 passed by the learned Additional Sessions Judge, Mekhliganj, Coochbehar in Sessions Trial No. 16 (01) of 2023 arising out of Kuchlibari Police Station Case No.119 of 2022 dated 01.09.2022, thereby convicting the appellants and others under Section 14A of the Foreigners' Act and sentencing them to undergo simple imprisonment for 2 years each and to pay fine of Rs. 10,000/- each, in default to undergo simple imprisonment for a further period of one month.

2. Learned counsel appearing on behalf of the appellants submits as follows. The appellants pleaded guilty and were handed out the above referred sentences. They are Bangladeshi nationals and are languishing in custody for a considerable period. They do not have the means to pay the fine. In view of the same and on humanitarian grounds, it is prayed that the sentence of fine imposed on them be set aside so that after serving the substantive period of sentence of 2 years, they could be repatriated to their homeland.
3. Learned counsel for the State, in his usual fairness, submits that it is indeed a very unfortunate case where the appellants are unable to pay the fine amount for which they might have to undergo further term of imprisonment. On humanitarian consideration, the State would not come in the way if the sentence of fine is set aside.
4. I have heard the submissions of the learned counsels for the parties and have perused the application and the impugned judgment and order.
5. Appeal is admitted.
6. Calling for the records and preparation of Paper Book are dispensed with, especially in view of the fact that the applicants had pleaded guilty and the judgment reflects quite well the prosecution case.

7. After hearing the parties and upon perusing the impugned judgment and order, it appears that there is hardly any scope for interfering either with the order of conviction or the order of substantive sentence of imprisonment.

1. It appears that the appellants are the transgender and belonged to vulnerable community. It is stated that they cannot meet the other jail inmates and they are segregated totally passing their days in most miserable condition. Moreover, they do not have any family members or any relations in India who can provide financial assistance and pay the fine on their behalf. The appellants are also now represented by the Advocate appointed by the DLSA, Jalpaiguri. Under such circumstances, I am of the view that it is a fit case where the Court shall consider whether the fine imposed should be retained or not.

2. In view of the above and in the interest of justice, the petition is disposed of by upholding the order of conviction and the substantive sentence of imprisonment, but setting aside the fine imposed by the impugned judgment and order.

3. Consequently, if the appellants are not wanted in any other case, the moment the appellants serve out the substantive period of sentence, appropriate

proceedings shall be initiated to have them repatriated to their homeland forthwith.

4. Accordingly, the appeal is disposed of.
5. Urgent Photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.
6. A copy of the judgment shall be sent down to the learned Trial Court by special messenger forthwith.

(Soumen Sen, J.)