

04.08.2021
Court No.30
Item Nos. 22
Avijit Mitra

C.R.A. No. 233 of 2020
with
CRAN No. 2 of 2021
(Via video Conference)

In Re:- Application for suspension of sentence under section 389(1) of the Code of Criminal Procedure arising out of Sessions Trial No.43(02) of 2015;

And

In Re : Bikash Murmu

Petitioner/Appellant

Mr. Sourav Chatterjee,
Mr. Soumyajit Das Mahapatra

For the Appellant

Mr. Neguive Ahmed,
Ms. Amita Gaur

For the State

This is an application for an order of suspension of sentence and for grant of bail pending appeal against an order of conviction and sentence. The petitioner/appellant herein has been convicted of offences under sections 449/302 read with Section 34 of the Indian Penal Code.

Mr. Chatterjee, learned advocate appearing for the petitioner/appellant submits that the petitioner is already in custody for about 9 years 2 months. There is also no possibility towards early disposal of the appeal. Considering such long incarceration the petitioner's sentence may be suspended and he may be enlarged on bail on any stringent condition.

He submits that one offending weapon was recovered from one Shyamapada Sardar, who expired, in course of trial and

another offending weapon was recovered from one co-accused person, namely, Haren Murmu. However, there had been no recovery from the petitioner herein. There are fatal contradictions and inconsistencies in the testimonies of the prosecution witnesses. Such inconsistencies have been disregarded by the learned court below, without any reason. In view thereof, there is a chance of success in the present appeal.

Mr. Chatterjee further submits that in the present pandemic situation and rapid proliferation of the virus, prayer for bail upon suspension of sentence needs to be considered liberally.

Ms. Gaur, learned advocate appearing for the State opposes the petitioner's prayer and submits that there were two eye-witnesses being P.W.1 and P.W.6 and the materials on record clearly disclose the direct involvement of the petitioner in the alleged offence.

We have assessed the quality of the evidence recorded by the learned trial court. Having regard to the severity of the offences and the strength of the prosecution case, we are of the opinion that this is not a fit case for suspension of sentence and grant of bail.

The application being CRAN No. 2 of 2021 is, accordingly, dismissed.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Subhasis Dasgupta, J)

(Tapabrata Chakraborty, J)

