

Criminal Appeal 28/2024

Present : Shri Bibhuti Khesong (J.O.No.WB00693)
District & Sessions Judge,
Alipurduar

Order no.9
dt.26.11.24.

The case is taken up for hearing of the bail application filed by the petitioners/convicts namely, **1) Aluaddin Ali, S/o. Hasmat Ali & 2) Miraj Rahaman, S/o. Noorjaman Miya**, praying for bail under the provisions of Section 430 of the Bharitya Nagarik Suraksha Sanhita, 2023.

It is submitted that the appellants/convicts had been tried by the Court of Learned Chief Judicial Magistrate at Alipurduar in connection with **C.R. Case No.1113 of 2019**, and subsequently the Learned Trial Court found the appellants/convicts guilty of the offence punishable u/s 51(1) of the Wild Life (Protection) Act, 1972 and sentenced to undergo imprisonment for **5(five)** years and they are also sentenced to pay fine to the tune of **Rs.25,000/-** each only and in default of payment, the Learned Trial Court directed the petitioners to undergo further imprisonment for another 6 months u/s 51(1) of the Act.

Mr. Prasad Narayan Majumder, Ld. Counsel appearing for the appellants/convicts submitted that the Learned Trial Court wrongly convicted the appellants/convicts without proper appreciation of the evidence on record. Mr. Majumder further contended that the interception of the appellants/convicst was allegedly made from public road but not from any forest area. Mr. Majumder further argued that the prosecution has failed to examine any independent witness and without corroboration from any independent witness in respect of the alleged seizure of Pangolin, the Learned Trial Court erroneously found the accused guilty of the alleged offence punishable u/s 51 of the Wild Life (Protection) Act. It is further submitted by the Mr. Majumder that throughout the trial, the accused persons were on bail and they never misused the liberty granted by the Court. It is also submitted that in case of bail, the accused persons will not abscond if this Appellate Court grants them bail and if necessary the appellants would surrender before the Learned Trial Court as and when directed by this

Appellate Court. Mr. P.N. Majumder further argued that the seized wildlife was never produced before the Court. It is further submitted by Mr. Majumder that there is disparity between the facts as stated in the POR and the oral testimony of the witnesses recorded by the Learned Trial Court.

Per contra, Mr. Suhrid Majumder, the Learned Public Prosecutor, contended that for attracting the offence punishable u/s 51 of the Wild Life (Protection) Act, the recovery need not be from forest area but such recovery can be made from any place either house of the accused or any public or isolated places as the place of recovery does not decide the offence in the cases initiated under the provisions of Wild Life (Protection) Act, 1972 .

Mr. Majumder further argued that since the accused has been found guilty of the offence punishable u/s 51 of the Wild Life (Protection) Act and convicted for the said offence, the Court can hold that the prima facie charge is well proved against the said appellant/convict and the accused cannot get bail as a matter of right unless it is shown that the judgement of the Learned Trial Court is perverse and there is 100% chance of acquittal of the convicts/appellants. Finally, Mr. Majumder contended that the offence of possession of live Pangolin which is in the schedule-I of the Wild Life (Protection) Act, is a serious offence and he does not deserve any leniency.

Mr. Majumder further argued that the seized Pangolin was released as per the order of the Learned Magistrate and Learned Magistrate was fully satisfied about the said seizure of the said Pangolin before passing the release order. Mr. Majumder urged that the video clip of release of Pangolin is in the case record. Mr. Majumder further contended that Section 57 of the Wild Life (Protection) Act provides presumption of the offence and unless contrary is proved. It is presumed that the accused committed the offence punishable under Wild Life (Protection) Act. Mr. Majumder further argues that the burden lies upon the accused to rebut the presumption of law.

I have carefully heard the Ld. Counsel for both the parties.

Perused the bail application and the entire case record.

Considered.

Suspension of sentence is a statutory remedy available Section 430 of the Bharitya Nagarik Suraksha Sanhita that allows a court of appeal to suspend sentence while the appeal is being considered and not finally decided. Section 430 provides that while an appeal is pending, the Appellate Court can suspend the sentence giving the reasons for such suspension in writing and the Court of appeal can also order release of the accused on bail. The relevant part of Section Section 430 of the Bharitya Nagarik Suraksha Sanhita, 2023 reads as under :

“ 430. Suspension of sentence pending of appeal ; release of appellant on bail – (1) 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 if order appeal accused be suspended and also, if he is in confinement, that he be released on bail, or on his own bond.

Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted an offence punishable with death or imprisonment for life or imprisonment of not less than 10 years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release :

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.”

The corresponding section is old procedure, i.e. Criminal Procedure Code is Section 389(1).

In recent judgement in ***Omprakash Sahni v. Jai Shankar Chaudhary, (2023) 6 SCC 123 : 2023 SCC OnLine SC 551 at page 137*** (delivered by the Hon’ble Justice M. R Shah and J.B. Pardiwala on 02.05.2023), wherein the Hon’ble Apex Court has been pleased to observe as under :

“ 21. Suspension conveys postponement or temporarily preventing a state of affairs from continuing. According to *Black's Law Dictionary* (Seventh Edition), the word “suspend” means, inter alia, to interrupt; postpone; defer. *Black's Law Dictionary* (Seventh Edition) describes the word “suspension” to mean, inter alia, an act of temporarily delaying, interrupting or terminating something. Attributing the same meaning to the word “suspend” as pointed out above, *New Oxford Dictionary of English* (1998 Edition) describes suspend as temporarily preventing from continuing or being enforced or given effect or defer or delay an action, event or judgment.

22. Thus, when we speak of suspension of sentence after conviction, the idea is to defer or postpone the execution of the sentence. The purpose of postponement of sentence cannot be achieved by detaining the convict in jail;

hence, as a natural consequence of postponement of execution, the convict may be enlarged on bail till further orders.

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 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.”

Further, the Hon’ble Apex Court in paragraph 33 has been pleased to record the findings in the following words:

“33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the court, therefore, 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. If the answer to the abovesaid question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually takes very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The appellate court should not reappreciate the evidence at the stage of Section 389 CrPC and try to pick up a few lacunae or loopholes here or there in the case of the prosecution. Such would not be a correct approach.”

Coming to the case on hand, it is noteworthy that the accused has been arraigned for the commission of the offence punishable u/s 51 of the Wild Life (Protection) Act, 1972 and he is found guilty by the Learned Trial Court. The Learned Trial Court has sentenced the appellants/convicts to undergo imprisonment for **5(five)** years coupled with the fine of **Rs.25,000/-** each and directed to undergo for another **6(six)** months imprisonment for failure to pay fine so fixed.

On scrutiny of the case record it appears that the Learned Trial Court has examined as many as **5 prosecution witnesses**. Altogether the prosecution has relied upon the written complaint, seizure list etc.

On perusal of the impugned judgement, prima facie, I find that the Learned Trial Court has passed the reasoned judgement and there is nothing on record to suggest that the accused persons have 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 reappreciated 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 appellants that the convicts never misused the liberty granted by the Court would not suffice to entitle him to get the benefit of bail in the appeal stage. Needless to mention, the conviction would mean that the commission of the offence is already established against the convict in the trial Court level and the convict cannot get bail in a routine manner as a matter of right. However, it can be noted that the best effort can be made to dispose of the instant appeal on merit, as expeditiously as possible, preferably within a fortnight provided both the parties come forward to comply their respective hearing within the given period.

In view of the above discussion and in the light of the ratio of the Hon'ble Supreme Court in **Omprakash Sahni Vs. Jai Shankar Chaudhary**, I do not find any justification to allow the bail prayer of the convict/appellant at this stage. Accordingly, the bail application moved for and on behalf of the appellants namely, **1) Aluaddin Ali & 2) Miraj Rahaman** is **rejected**.

The bail application is, thus, disposed of accordingly.

To 05.12.24 for hearing of appeal.

Both the parties are to extend their best cooperation to dispose of the appeal within a fortnight.

Dictated & Corrected
by me

Sessions Judge,
Alipurduar.

Sessions Judge,
Alipurduar.

