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23.08
2024
Ct. No. 3

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Criminal Appellate Jurisdiction

C.R.A.(SB) 30 of 2024
With
IA No. CRAN 1 of 2024

In the matter of: An application for suspension of sentence under Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023 being CRAN 1 of 2024 filed on 09.07.2024 in connection with Sessions Case No. 63 of 2018 corresponding to Sessions Trial No. 01(07) of 2019.

Majibul Hossain
Vs.
The State of West Bengal

Mr. Arnab Saha
Mr. Ranjan Raj

...For the Appellant

Mr. Aditi Shankar Chakraborty
Mr. Arjun Chowdhury

...For the State

Re.: IA No. CRAN 1 of 2024

Written objection filed on behalf of the State is taken on record.

This is an application, wherein the petitioner has prayed for suspension of the sentence awarded by the Court below on 14th June, 2024 in S.T. Case No. 01(07) of 2019 and also prayed for bail.

It is submitted on behalf of the appellant that the appellant is a step-brother of the victim and over a property dispute between the parties, the appellant was falsely implicated with the case. He further submits that the witnesses who were deposed before the Court below are all interested witnesses and in fact no independent witness has corroborated the FIR story. He further submits that no serological test

was conducted and most importantly the wearing apparel of the victim was not seized. He further submits that the alleged offending weapon that is '*daw*' which marked as material exhibit in the case is very much available in the open market. He further submits that the original injury report was never placed with the record. Furthermore PW-1 was not an eye-witness and his evidence is not trustworthy. The witnesses could not say wherefrom the offending weapon was seized. In fact there are lot of discrepancies in the evidences of PW-1 and PW-2 though the prosecution has heavily relied upon the evidence of PW-1. He further submits that the concerned Doctor has not noted the name of the assailants in the report. He further submits that the accused was all along in bail during trial. He also submits that in the present case paper book has also not prepared till date and as such there is no chance of early disposal of the appeal. In such circumstances, he prayed for suspension of sentence as well as releasing the accused on bail on any term and conditions.

Learned Counsel appearing on behalf of the State raised objection against the prayer for bail and in this context by referring written objection, he contended that in the present context there is no question of presumption of innocence and for which considerations for granting of bail under Section 389 of the Cr.P.C. is not on the similar footing with that of granting of bail in connection with pre-trial arrest under Section 439 of the Cr.P.C.

To buttress his submission, learned Counsel for the State relied on a decision of the Hon'ble Apex Court in the case of *Preet Pal Singh Vs. The State of Uttar Pradesh & Anr.*, reported in AIR 2020 SC 3994.

I have considered the submissions made on behalf of the parties. In view of the facts and circumstances of the case and it appears to this Court that the appellant has made out an arguable case in the present appeal which need adjudication. Furthermore, there is hardly any chance of early disposal of the appeal.

Accordingly, I direct, pending hearing of the appeal, the order of execution of sentence shall remain suspended and the appellant shall be released on bail to the satisfaction of the learned Chief Judicial Magistrate, Cooch Behar on a bond of Rs.20,000/- with two sureties of like amount each, one of whom must be local, subject to the condition that the appellant will not leave the jurisdiction of the State of West Bengal without the prior leave of this Court.

The application for suspension of sentence being CRAN 1 of 2024 is disposed of.

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Since Lower Court Records have not yet been examined by the Department concerned in spite of the directions of this Court, Registry of this Court is further directed to examine the Lower Court Records at once and shall prepare requisite number of Paper Books within two months from date and as soon as the preparation of the Paper

Books is complete and the appeal is made ready for hearing, the same shall be listed for hearing before the next available Circuit Bench, subject to convenience of that Bench.

Urgent photostat certified copy of this order, if applied for, be given to the parties as early as possible on compliance of necessary formalities.

(Ajoy Kumar Mukherjee, J.)