

SUPREME COURT OF INDIA

Anil Ari

Vs.

State of West Bengal

Crl.A.No....of 2009

(Dr. Arijit Pasayat and Asok Kumar Ganguly)

09.02.2009

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Calcutta High Court rejecting the application for suspension of sentence under Section 389 of the *Code of Criminal Procedure, 1973* (in short the `Code'). Four persons who are the appellants in Criminal Appeal No.168 of 2008 were convicted by learned Additional District and Sessions Judge, Fast Track, Second Court, Contai, Purba Medinipur for offences punishable under Sections 342, 302 and 201 read with Section 34 of the *Indian Penal Code, 1860* (in short the `IPC').

3. Law was set into motion on 9.7.1994 by one Shamburam Maity, alleging that 17 accused persons and many unknown persons on 8.7.1994 at about 11.00 p.m. in furtherance of their common intention had murdered the complainant's brother Shibram Maity and had concealed the dead body in the house of one Sasanka Maity. The police undertook investigation and after completion of investigation charge sheet was filed against 19 persons. Charge was framed on 5.11.2005 and the accused persons faced trial as they pleaded innocence.

4. It is to be noted that charges were framed against 16 persons as two of the accused persons had expired before the commencement of the trial. The trial Court on consideration of the evidence came to hold that appellants before the High Court were guilty as afore-noted.

5. The application for suspension of sentence in terms of Section 389 of Code was filed which was rejected primarily being of the view that the evidence of PWs 1, 2, 4 and 7 was sufficient to establish the accusations and, therefore, this was not a fit case where prayer in terms of Section 389 of Code was to be accepted.

6. On 29.9.2008 a Special Leave Petition was dismissed in respect of petitioner Nos.2 to 4. Notice was issued qua petitioner No.1 only. Learned counsel for the appellant-Anil Ari submitted that the said appellant is nearly 70 years old and is in jail for nearly one year and that he was on bail during trial.

7. Learned counsel for the respondent-State on the other hand submitted that the trial Court has analysed the evidence in great detail and has come to the conclusion about the guilt of the appellant and three other accused persons.

8. Section 389 of the Code deals with suspension of execution of sentence pending the appeal and release of the appellant on bail. There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is the requirement for the appellate Court to record reasons in writing for ordering suspension of execution of the sentence or order appealed. If he is in confinement, the said court can direct that he be released on bail or on his own bond. The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine.

9. The appellate Court is duty bound to objectively assess the matter and to record reasons for the conclusion that the case warrants suspension of execution of sentence and grant of bail.

10. The mere fact that during the trial, they were granted bail and there was no allegation of misuse of liberty, is really not of much significance. The effect of bail granted during trial loses significance when on completion of trial, the accused persons have been found guilty. The mere fact that during the period when the accused persons were on bail during trial there was no misuse of liberties, does not per se warrant suspension of execution of sentence and grant of bail. What really is necessary to be considered by the High Court is whether reasons existed to suspend the execution of sentence and thereafter grant bail.

11. In *Vijay Kumar V. Narendra and others*¹ and *Ramji Prasad V. Rattan Kumar Jaiswal and another*², it was held by this Court that in cases involving conviction under Section 302 IPC, it is only in exceptional cases that the benefit of suspension of sentence can be granted. In Vijay Kumar's case (supra) it was held that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the Court should consider the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, and the desirability of releasing the accused on bail after they have been convicted for committing the serious offence of murder.

12. The above position was highlighted in *Kishori Lal v. Rupa and Others*³, *Vasant Tukaram Pawar v. State of Maharashtra*⁴ and *Gomti v. Thakurdas and Ors.*⁵.

13. On the peculiar facts of the case considering the age of the accused appellant Anil Ari, we direct that he shall be released on bail on furnishing security of Rs.30,000/- with two

sureties of like amount to the satisfaction of learned Additional District and Sessions Judge, Fast Track, Second Court, Contai, Purba Medinipur in Sessions trial No.112/2004 relating to C.R. No.432/1994. It is made clear that we have directed release of appellant No.1 only on considering the fact that he is 70 years old and not on consideration of the merits of the case.

14. The appeal is allowed to the aforesaid extent.

¹(2002 (9) SCC 364)

²(2002 (9) SCC 366)

³2004(7) SCC 638

⁴2005 (5) SCC 281

⁵(2007 (11) SCC 160)