

08.10.2021
SL No.7,8,9
Court No.30
(gc)

CRA 95 of 2020
With
CRAN 1 of 2020
(Old No: CRAN 1016 of 2020)

Chand Saudagar @ Chand Swadagar & Anr.
Vs.
The State of West Bengal

With

CRA 1 of 2020

With

CRA 39 of 2020

(Via video Conference)

Mr. Navanil De,
Mr. R. Chakraborty,
...for the Appellants.

Mr. Madhusudan Sur, Ld. A.P.P.,
Mr. Manoranjan Mahata,
...for the State

Re: CRAN 1016 of 2020
In
CRA 95 of 2020

The accused appellants have filed this application being CRAN 1016 of 2020 for suspension of sentence. This is the first application for suspension of sentence preferred by the appellants accused in connection with the appeal. The petitioners/appellants are in custody for over 9 years. The appellant No.1 is 66 years old and the appellant No.2 is 70 years old respectively.

The petitioners submit that in view of the fact that there is no possibility of the appeal being heard within a reasonable time, mercy can be shown to them by suspending the sentence after taking into consideration their conduct during custody.

Accordingly, we called for a report from the Superintendent of Berhampore Central Correctional Home regarding their conduct during custody. The report filed by the Superintendent of Berhampore Central Correctional Home shows that their conduct was quite satisfactory and nothing adverse is reported against the appellants. The views of the co-inmates also suggest that the petitioners are supportive and no complaint was found from the co-inmates against the life convicts at the Correctional Home.

We have heard the learned Advocate appearing for the parties and assessed the quality of the evidence on record. We find that the applicants have an arguable case towards success of the appeal, moreover, petitioners are not responsible for the delay in disposal of the appeal. The appellants are in custody for over 10 years. We do not find that the appeal could be disposed of within a measurable time. In the aforesaid conspectus of facts we feel that the liberty of the petitioners under Article 21 of the Constitution of India needs to be protected and following the decisions of the Hon'ble Supreme Court in ***Kashmira Singh v. State of Punjab; (1977) 4 SCC 291; Akhtari Bi (Smt) v. State of Madhya Pradesh: (2001) 4 SCC 355; Surindr Singh v. State of Punjab: (2005) 7 SCC 387; Sunil Kumar v. Vipin Kumar & Ors.: (2014) 8 SCC 868; Daler Singh v. State of Punjab; 2017 Cri L J 2337; Husain & Anr. v. Union of India: (2017) 5 SCC 702; Dharampal v. State of Haryana : 2017 Cri L J 2137 & Batchu Rangarao & Ors. v. State of Andhra Pradesh: 2017 (2) ALD (Crl.) 78 (AP); Supreme Court Legal Aid Committee Representrial Undertrial Prisoner vs. Union of India: 1994 (6) SCC 731*** and ***Kashmira Singh vs. The State of Punjab: (1977)***

4 SCC 291 the applicants are entitled to be granted suspension of sentence primarily because there is very little possibility of their appeals being heard in the near future and also taking into consideration the nature of the offence and the quality of the prosecution evidence on record which we have considered carefully.

Considering the long incarceration of the petitioners and having regard to the fact that there is no immediate possibility of the appeal being taken up for hearing on merits, we allow the application for suspension of sentence in the result the sentence of imprisonment shall stand suspended.

Accordingly, the petitioners shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand only) each, with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Murshidabad at Berhampore. The petitioners shall be present or represented by an advocate on all future dates of hearing of the appeals.

Accordingly, the applications being CRAN 1016 of 2020, stands disposed of.

In view of the fact that the appeal is otherwise ready for hearing, let the appeals, being CRA 95 of 2020 and CRA 1 of 2020 and CRA 39 of 2020, shall be listed under the heading for "Hearing" on 6th December, 2021.

The report filed by the Superintendent, Berhampore Central Correctional Home is kept with the record.

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

(Rabindranath Samanta, J.)

(Soumen Sen, J.)