IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

CRA 297 of 2019
With
IA NO: CRAN 2 of 2019
OLD CRAN 3446 of 2019

Naju Bibi @ Narjina Bibi

Vs.

The State of West Bengal

Before: **The Hon'ble Justice Arijit Banerjee**

&

The Hon'ble Justice Apurba Sinha Ray

For the Appellants / applicant	:	Mr. Phiroze Edulji, Adv, Mr. Rousatvi Mukherjee, Adv. Mr. Syed Nassirul Hossain, Adv. Ms. Samira Grewal, Adv.
For the State	:	Mr. Sudip Ghsoh, Adv, Mr. Biswanath Banerjee, Adv.
Judgment On	:	30.06.2023

Arijit Banerjee, J. :-

In Re:- CRAN 3446 of 2019

1. This application has been taken out in an appeal against a judgment and order dated December 20, 2018, passed by the learned Additional Sessions Judge Kandi, Murshidabad in S.T. No. 04(06) 2017/G.R. 468/2017

convicting the applicant/appellant for offence punishable under Section 302 of the Indian Penal Code. The applicant has been sentenced to suffer life imprisonment and to pay a fine of Rs. 10,000/-, in default to suffer further imprisonment for 6 months. The applicant prays for suspension of her sentence and grant of bail pending disposal of the appeal which has been filed by the applicant.

2. The prosecution cases that the applicant gave her step daughter who was six years of age at the relevant time, sweets laced with poison. The girl ate such sweets and fell ill, started vomiting, was taken to the hospital and passed away there.

3. The defence case is one of complete denial.

4. We have gone through the prosecution evidence on record and the judgment and order under appeal.

5. Learned Counsel for the applicant pointed out certain inconsistencies in the prosecution evidence. Learned Counsel pointed out that while according to PW 1 who is the sister-in-law of the applicant, the incident of the applicant offering poisoned sweets to the victim girl occurred around 11 a.m. on the relevant day, according to the P.W. 7 who is the applicant's husbands brother's wife, the incident occurred around 11.30 a.m./12 p.m. Learned Counsel further said that although P.W. 7 claims to have accompanied the victim child to the hospital, she in her evidence not mention having told the doctor that poison had been administered to the girl.

6. Learned Counsel further drew our attention to the deposition of P.W. 5 who is the grandfather of the victim child. He has categorically stated that

the victim child was looked after by him since the stepmother being the applicant herein, did not take care of the girl. If that be so, the case of the prosecution would fall flat, submitted learned Counsel.

7. Learned advocate further submitted that although P.W. 7 claims to be residing in a house adjacent to where the applicant and her husband resided, the same does not appear from the sketch map prepared by the P.W. 6 (Investigating Officer).

8. Learned Counsel submitted that there is a good chance that the applicant will succeed at the final hearing of the appeal. If she ultimately succeeds nobody will be able to compensate her for the years she would have lost in custody in the mean time. She has been in jail for more than 6 years and 3 months. She should be released on bail on such conditions as the Court may deem fit and proper.

9. Learned Advocate for the State submitted that the discrepancies in the evidence on record that have been referred to by the learned Advocate for the applicant are minor in nature. Such inconsequential discrepancies would not affect the merit of the decision of the learned Trial Judge. On a careful analysis of the evidence on record, learned Trial Judge has found the applicant guilty of offence punishable under Section 302 of the IPC. Killing a six year old child by feeding her poisoned sweet is a heinous crime. The applicant does not deserve bail. Hearing of the appeal may be expedited.

10. Having considered the evidence on record and the judgment under appeal, in our view, this is not a case where it can be said that the appellant/applicant has absolutely no chance of succeeding at the final hearing of the appeal. Since the appeal is pending, her conviction has not

attained finality. She has spent about six and a half years in incarceration. Nobody can say with any certainty when the appeal will be finally decided. If the appeal succeeds at whatever future point of time, indeed, no one will be able to compensate the applicant for the time lost in jail by reason of conviction for a crime that she has not committed.

11. This is where the principles of law laid down by the Supreme Court in the cases of ***Kashmira Singh v. State of Punjab, reported at (1977) 4 SCC 291, Akhtari Bi (Smt) v. State of Madhya Pradesh, reported at (2001)4 SCC 355, Surinder Singh v. State of Punjab, reported at (2005) 7 SCC 387 and Hussain & Anr. V. Union of India, reported at (2017) 5 SCC 702***, come into play.

12. Relevant portions from some of the aforesaid decisions are extracted hereunder:-

a) ***Kashmira Singh v. State of Punjab, reported at (1977) 4 SCC 291***:-

"2. The appellant contends in this application that pending the hearing of the appeal he should be released on bail. Now, the practice in this Court as also in many of the High Courts has been not to release on bail a person who has been sentenced to life imprisonment for an offence under section 302 of the Indian penal Code. The question is whether this practice should be departed from and if so, in what circumstances. It is obvious that no practice howsoever sanctified by usage and hallowed by time can be allowed to prevail if it operates to cause injustice. Every practice of the Court must find its ultimate justification in the interest of justice. The practice not to release on bail a person who has been sentenced to life imprisonment was evolved in the High Courts and in this Court on the basis that once a person

has been found guilty and sentenced to life imprisonment, he should not be let loose, so long as his conviction and sentence are not set aside, but the underlying postulate of this practice was that the appeal of such person would be disposed of within a measurable distance of time, so that if he is ultimately found to be innocent, he would not have to remain in jail for an unduly long period. The rationale of this practice can have no application where the Court is not in a position to dispose of the appeal for five or six years. It would indeed be a travesty of justice to keep a person in jail for a period of five or six years for an offence which is ultimately found not to have been committed by him. Can the Court ever compensate him for his incarceration which is found to unjustified? Would it be just at all for the Court to tell a person : "We have admitted your appeal because we think you have a prima facie case, but unfortunately we have no time to hear your appeal for quite a few years and, therefore, until we hear your appeal, you must remain in jail, even though you may be innocent?" What confidence would such administration of justice inspire in the mind of the public? It may quite conceivably happen, and it has in fact happened in a few cases in this Court, that a person may serve out his full term of imprisonment before his appeal is taken up for hearing. Would a judge not be overwhelmed with a feeling of contrition while acquitting such a person after hearing the appeal? Would it not be an affront to his sense of justice? Of what avail would the acquittal be to such a person who has already served out his term of imprisonment or at any rate a major part of it? It is, therefore, absolutely essential that the practice which this Court has been following in the past must be reconsidered and so long as this Court is not in a position to hear

the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail in cases where special leave has been granted to the accused to appeal against his conviction and sentence."

(b) ***Akhtari Bi (Smt) v. State of Madhya Pradesh, reported at (2001) 4 SCC 355.***

"5. To have speedy justice is a fundamental right which flows from Article 21 of the Constitution. Prolonged delay in disposal of the trials and thereafter appeals in criminal cases, for no fault of the accused, confers a right upon him to apply for bail. This Court has, time and again, reminded the executive of their obligation to appoint requisite number of judges to cope with the ever-increasing pressure on the existing judicial apparatus. Appeal being a statutory right, the trial court's verdict does not attain finality during pendency of the appeal and for that purpose his trial is deemed to be continuing despite conviction. It is unfortunate that even from the existing strength of the High Court's huge vacancies are not being filled up with the result that the accused in criminal cases are languishing in the jails for no fault of theirs. In the absence of prompt action under the constitution to fill up the vacancies, it is incumbent upon the High Courts to find ways and means by taking steps to ensure the disposal of criminal appeals, particularly such appeals where the accused are in jails, that the matters are disposed of within the specified period not exceeding 5 years in any case. Regular benches to deal with the criminal cases can be set up where such appeals be listed for final disposal. We feel that if an appeal is not disposed of within the aforesaid period of 5 years, for no fault of the

convicts, such convicts may be released on bail on such conditions as may be deemed fit and proper by the Court. In computing the period of 5 years, the delay for any period, which is requisite in preparation of the record and the delay attributable to the convict or his counsel can be deducted. There may be cases where even after the lapse of 5 years the convicts may, under the special circumstances of the case, be held not entitled to bail pending the disposal of the appeals filed by them. We request the Chief Justices of the High Courts, where the criminal cases are pending for more than 5 years to take immediate effective steps for their disposal by constituting regular and special benches for that purposes."

(c) ***Husain & Anr. V. Union of India, reported at (2017) 5 SCC 702***.

"11. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. This Court has held that while a person in custody for a grave offence may not be released if trial is delayed, trial has to be expedited or bail has to be granted in such cases"

13. Keeping in mind the above position of law and that there is no certainty of the appeal being finally decided at an early date in view of the large number of cases pending, and also on an overall appreciation and assimilation of the nature and quality of the evidence on record, we deem it appropriate to suspend the sentence of imprisonment and fine imposed on the applicant by the learned trial Court and grant bail to the applicant on the following terms:-

(i) She will furnish bail bond of Rs. 10,000/- with two sureties of like amount one of whom must be local to the satisfaction of Additional Sessions Judge kandi, Murshidabad.

(ii) She will not leave the jurisdiction of the police station within which she will reside.

(iii) She will report to the officer-in-charge of the said police station once every month, by the 7th day of the month.

(iv) She will attend each and every hearing of the appeal when the appeal is taken up for hearing.

14. The application being **IA NO: CRAN 2 of 2019 OLD CRAN 3446 of 2019** is accordingly disposed of.

15. Criminal Section is directed supply urgent photostat certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

16. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities

I agree.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)