

CRM-43631-2021 in CRA-S-1819 of 2019

ANAND DUTTA VS. STATE OF JAMMU AND KASHMIR AND ANR.

Present :- Mr.Bipan Ghai, Senior Advocate, with
Mr.Paras Talwar, Advocate,
Mr.Deepanshu Mehta, Advocate, and
Mr.Prabhdeep Bindra, Advocate, for the applicant/appellant.

Mr.R.S.Cheema, Senior Advocate, with
Mr.Arshdeep Singh Cheema, Advocate, and
Mr.Satish Kumar, Advocate for the
State of Jammu and Kashmir-respondent No.1.

Mr.A.S.Sandhu, Additional Advocate General, Punjab,
for respondent No.2.

Mr.M.S.Basra, Advocate, and
Mr.Anupinder Singh Brar, Advocates for the complainant.

This is the first application filed under Section 389 Cr.P.C.
on behalf of applicant/appellant-Anand Dutta, seeking suspension of
sentence during the pendency of the appeal.

Applicant/appellant stands convicted for offence punishable
under Section 201 of RPC read with Section 34 and 120-B of RPC
pertaining to FIR No.10 dated 12.01.2018 registered at Police Station
Hiranagar (Jammu and Kashmir), and has been sentenced to undergo
rigorous imprisonment for a period of five years in terms of judgment of
conviction and order of sentence dated 10.06.2019 passed by learned
Sessions Judge, Pathankot.

Notice in the application.

The application seeking suspension of sentence was listed
today and notice thereof was accepted by the State of Jammu and
Kashmir through Mr.Arshdeep Singh Cheema, Advocate.

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As the bail application of another co-accused was listed in the motion list, the learned Senior Counsel Sh.R.S.Cheema, Senior Advocate, appearing on behalf of State of Jammu and Kashmir conveyed his no objection to the taking up of the suspension of sentence, on merits today itself. Hence, the application is decided with the consent of the parties.

We have heard learned counsel for the parties.

Learned counsel appearing on behalf of the applicant/appellant has contended that he has been falsely implicated in the aforesaid case and that the allegations levelled by the prosecution are not corroborated in any material particulars. An argument has been raised that the applicant/appellant was officiating SHO only on 11.01.2018 and the regular SHO returned from leave on 12.01.2018. The investigation was conducted under the DSP and thereafter under the second SIT headed by the Additional Superintendent of Police. Reference was also made to the deposition made by the various witnesses to contend that the proceedings and investigation were carried out as per the direction of the incharge of SIT and applicant had no role. The incriminating evidence in the form of statement of PW-9 is stated to be discrepant and unreliable inasmuch as the said witness admitted during cross-examination that the allegation of ante-dating the receipt of the case property in *malkhana* was not recorded by him. Counsel for the applicant/appellant further argued that there was no occasion for destruction of any evidence and that the testimony of the witnesses gets

washed away in the cross-examination. Further argument was raised that the disclosure statements recorded by the police are hit by Section 25 of the Evidence Act and cannot be used against him. It was further submitted that out of the total awarded sentence of 5 years, the applicant/appellant has already undergone an actual custody of 2 years, 7 months and 3 days out of which the actual custody after conviction is 1 year 6 months and 24 days. The applicant/appellant has thus undergone more than half of the substantive sentence awarded to him and that sentence of the co-accused namely Tilak Raj has also been suspended by this Court vide order dated 16.12.2021 passed in CRM-20285 of 2019 in CRA-S-1814-2019.

The suspension of sentence on behalf of the applicant is opposed by Sh.R.S.Cheema, Senior Advocate appearing for State of Jammu and Kashmir on the ground that the case is heinous in its nature and that the applicant/appellant being a member of police force collaborated with the accused persons to perpetuate injustice.

It is further submitted that the applicant/appellant is resident of vicinity of the victim and that the presence of the applicant/appellant is likely to spark reaction from the family of the victim and also that of the community in general leading to possibility of severe law and order problem. The learned senior counsel however, fairly admitted that the case of the applicant/appellant may not be in much deviation from that of the co-accused-Tilak Raj.

We have considered the rival submissions made on behalf of respective parties and also perused the custody certificate produced by the State of Punjab. It goes un-controverted that the applicant/appellant has undergone an actual sentence of 2 years 7 months and 3 days against the total awarded sentence of 5 years. Besides, it is also not disputed that the applicant/appellant has availed parole for a period of 11 months and 14 days. There is no instance that the applicant/appellant has either misused the concession of parole so granted or that any untoward incident had taken place during the period of parole so as to corroborate the apprehension raised by the learned counsel appearing for the State of Jammu and Kashmir.

The rights vested in an accused under Article 21 need to be balanced.

Debatable issues arise which would be considered at the time of final hearing of the main appeal.

We are not opining on merits of the case lest it may prejudice the outcome of the appeal.

Accordingly, prayer made in the instant application is accepted and the remaining sentence of the applicant/appellant-**Anand Dutta** is suspended during the pendency of the appeal.

The applicant/appellant-**Anand Dutta** is ordered to be released on bail on his furnishing personal/surety bonds to the

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satisfaction of Chief Judicial Magistrate/Duty Magistrate concerned.

Application stands disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

(VINOD S. BHARDWAJ)
JUDGE

20.12.2021

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