

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

Dated : 2nd April, 2025

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

I.A. No.01 of 2025 in Crl. A. No.05 of 2025

Applicant/Petitioner : Nandu Ram Rai

versus

Respondent : State of Sikkim

Application under Section 389(1) of the
Code of Criminal Procedure, 1973

Appearance

Mr. N. Rai, Senior Advocate with Mr. Pradeep Tamang and Ms. Tara Devi Chettri, Advocates for the Applicant/Petitioner.

Mr. Thinlay Dorjee Bhutia, Public Prosecutor with Mr. Yadev Sharma and Mr. S. K. Chettri, Additional Public Prosecutors for the State-Respondent.

ORDER (ORAL)

Meenakshi Madan Rai, J.

1. Heard on I.A. No.01 of 2025, which is an application filed by the Applicant, under Section 389(1) of the Code of Criminal Procedure, 1973 (hereinafter, the "Cr.P.C."), seeking enlargement on bail and suspension of sentence imposed on him.

2. Learned Senior Counsel for the Applicant submits that, the Applicant was convicted by the Court of the Learned Special Judge (POCSO Act, 2012), Gangtok, Sikkim, in ST (POCSO) Case No.36 of 2021 (*State of Sikkim vs. Nandu Ram Rai*), under Sections 9(c), 9(f), 9(l) and 9(m), all punishable under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter, the "POCSO Act"), vide the Judgment dated 06-02-2025 and Order on Sentence dated 07-02-2025. That, both are being impugned by an Appeal filed before this Court. Walking this Court through the facts of the case, Learned Senior Counsel submitted that the Applicant was employed as a Government primary school teacher,

while the alleged victim is a student of the said school. That, in August 2018, the victim and some of her school mates disclosed to their parents and guardians that the Applicant had been molesting them for quite some time and had threatened them with corporal punishment, if they disclosed the incidents to anyone. Consequently, on 23-08-2018, parents and guardians of the affected students, lodged the FIR before the concerned Police Station, which led to the registration of Case No.30/2018 on the same date, under Section 354 of the Indian Penal Code, 1860 (hereinafter, the "IPC") and Section 10 of the POCSO Act, against the Applicant. Although a single Charge-Sheet was filed for a total of eleven victims, all below the age of twelve years, however it was bifurcated by the Learned Trial Court into eleven individual cases. On completion of trial, the Prosecution having examined twenty-five witnesses in support of their case the conviction and Order on Sentence (*supra*) were pronounced. That, from the eleven cases the Applicant was acquitted in three cases but convicted in eight other matters arising from the same FIR, including the instant matter. Bail applications have been filed individually in all eight matters. That, the Applicant is innocent and has not committed the alleged offence and since his incarceration at State Central Prison, Rongyek, Gangtok, on conviction, he has become unrecognizable as he is now ailing from severe hypertension and diabetes. He is the only earning member in his family, has no criminal antecedents whatsoever and is a permanent resident of Pakyong District, Sikkim, where his family is settled. That, except the alleged victims no children from the same class were furnished as witnesses by the Prosecution. That, during the course of trial before the Learned Trial Court, the Applicant appeared consistently

and unfailingly on all dates fixed and made no attempt to abscond, jump bail or misuse the bail conditions. Hence, in light of the grounds furnished the Applicant be enlarged on bail, he shall abide by all the orders and conditions imposed by this Court should he be so enlarged.

3. Resisting the Petition for bail, Learned Public Prosecutor submitted that the victims of the depravity of the Applicant were all minor girls being his students and all below the age of twelve years. That, he is not the sole earning member in his family as his son is working in the same primary school, where the Applicant was accused of having molested the victims and his wife runs a shop in the village. That, there are no documents to support the claim of his ailments and in view of the nature of offences and the absence of medical documents as also the fact that after the FIR was lodged the Investigating Officer had a difficult time locating and arresting the Applicant, the Petition for bail be rejected.

4. I have considered the rival submissions advanced and perused the documents before me.

5. Admittedly, the Applicant was on bail during the entire course of the trial and appeared consistently before the Learned Trial Court. No attempts were made by him at absconsion, besides which he is a permanent resident of Pakyong District, has his home and hearth there, which he has no reason to abandon and had no criminal antecedents prior to the instant matter. In light of the facts and circumstances advanced before this Court today, I am of the considered view that this is a fit case where the Applicant can be enlarged on bail subject to the following conditions;

(i) *The Applicant shall furnish Personal Bond of ₹ 50,000/- (Rupees fifty thousand) only, with one solvent surety in*

the like amount, to the satisfaction of the Court of the Learned Special Judge (POCSO Act, 2012), at Gangtok, Sikkim.

- (ii) He shall report to the Station House Officer (SHO), Ranipool Police Station, Gangtok, on the first and fourth Saturday of every month by 04.00 p.m.*
- (iii) He shall, however not leave the Pakyong District or the State without the prior permission of the Court of the Learned Special Judge (POCSO Act, 2012), at Gangtok, Sikkim.*
- (iv) He shall also appear before this Court on all dates fixed for hearing of the Appeal.*
- (v) Should he fail to report to this Court on the dates fixed, or before the SHO, Ranipool Police Station, his bail bonds shall stand cancelled and he shall be taken into custody forthwith.*

6. The sentence imposed by the Learned Trial Court, vide the impugned Order on Sentence dated 07-02-2025, in ST (POCSO) Case No.36 of 2021 (*State of Sikkim vs. Nandu Ram Rai*), against the Applicant accordingly stands suspended till further orders.

7. The observations made while disposing of this I.A. is in no manner to be construed as findings on the merits of the Appeal.

8. I.A. No.01 of 2025 is allowed and disposed of accordingly.

9. A copy of this Order be forwarded to the Learned Trial Court immediately for information and compliance.

10. A copy of this Order also be forwarded to the Jail Authority, State Central Prison, Rongyek, Gangtok and to the SHO, Ranipool, Police Station, Gangtok, for information and compliance.

(Meenakshi Madan Rai)

Judge

02-04-2025

Approved for reporting : **Yes**