

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

Dated : 7th May, 2025

**DIVISION BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE**

I.A. No.02 of 2024 in CrI. A. No.06 of 2024

Appellant/Petitioner : Lasang Tamang

versus

Respondent : State of Sikkim

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

Appearance

Ms. Gita Bista, Advocate (Legal Aid Counsel) for the
Appellant/Petitioner.

Mr. S. K. Chettri, Additional Public Prosecutor with Mr. Sujan
Sunwar, Assistant Public Prosecutor for the State-Respondent.

ORDER (ORAL)

Meenakshi Madan Rai, J.

1. Heard on I.A. No.02 of 2024, which is an application filed by the Appellant/Petitioner, under Section 389(1) of the Code of Criminal Procedure, 1973 (hereinafter, the "Cr.P.C."), seeking suspension of the sentence and consequent enlargement on bail of the Appellant/Petitioner.

2. It is submitted by Learned Counsel for the Appellant that from the records before the Learned Trial Court, the age of the accused appears to be recorded as eighteen years. That, the Prosecution made no effort to examine the accused or to take necessary steps for ascertainment of his age. That, it would be to the prejudice of the Appellant if he is confined in custody should it be found that he is a child in conflict with law and not an adult when the offence was committed. That, "child" as defined under Section 2(12) of the Juvenile Justice (Care and Protection of Children) Act, 2015, means a person who has not completed

eighteen years of age. Section 34 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter, the "POCSO Act"), provides that where an offence is committed by a child under the POCSO Act and any question arises with regard to the age of the accused such question shall be determined by the Special Court after satisfying itself about the age of the accused. That, no such steps towards this end was initiated by the Court of the Learned Special Judge (POCSO Act), Gangtok, Sikkim. That in such circumstances, in the interest of justice, the instant Petition be allowed.

3. Learned Additional Public Prosecutor submits that he has no objection to the Petition on consideration of the grounds advanced by Learned Counsel for the Appellant.

4. We have heard Learned Counsel for the parties. We have also perused the records placed before us.

5. In light of the arguments raised by Learned Counsel for the Appellant and the no objection of the Prosecution, we are of the considered view that this is a fit case where the Appellant/Petitioner can be enlarged on bail subject to the following conditions;

- (i) *The Appellant 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), Rangpo Police Station, Rangpo, 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, Rangpo 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 03-10-2023, in ST (POCSO) Case No.23 of 2020 (*State of Sikkim vs. Lasang Tamang*), against the Appellant 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.02 of 2024 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, Rangpo, Police Station, Rangpo, for information and compliance.

(Bhaskar Raj Pradhan)
Judge
07-05-2025

(Meenakshi Madan Rai)
Judge
07-05-2025

Approved for reporting : **Yes**