

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

DATED : 26th April, 2024

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

I.A. No.01 of 2024 in Crl.A. No.11 of 2024

Appellant : Madan Subba

versus

Respondent : State of Sikkim

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

Appearance

Ms. Zola Megi, Advocate for the Appellant.

Appellant present in person.

Mr. Shakil Raj Karki, Assistant Public Prosecutor for the State-
Respondent.

ORDER

Meenakshi Madan Rai, J.

1. Heard on I.A. No.01 of 2024 which is an application for bail under Section 389(1) of the Code of Criminal Procedure, 1973 (for short "Code"), seeking suspension of sentence imposed on the Appellant/convict.

2. It is submitted by Learned Counsel for the Appellant that the Appellant was convicted by the Court of the Learned Special Judge (PC Act, 1988), at Gangtok, in ST (Vig) Case No.02 of 2019 for the offences punishable under Section 420 read with Section 34 and 120B(2) of the Indian Penal Code, 1860, and also under Section 13(1)(c) and (d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988, vide the impugned Judgment dated 21-02-2024 and Order on Sentence of the same date.

3. Appeal assailing the Judgment has been filed before this Court. That, vide the Order on Sentence the Appellant was sentenced to undergo simple imprisonment for a term of three years under each of the Sections that he was convicted for, along with direction to pay fine of ₹ 10,000/- (Rupees ten thousand) only, each, under each of the Sections. A default clause of imprisonment on non-payment of fine was also imposed. That, the Learned Trial Court had granted bail to the convict/Appellant duly suspending his sentence for a period of for two months from 21-02-2024. The bail granted by the Learned Trial Court expired on 20-04-2024. That, the convict is a responsible citizen. He has no reason to abscond. That, throughout the trial from 2019 up to 21-02-2024 the Appellant has not violated the terms and conditions of the bail granted to him. That, the convict Appellant is 66 years, of age a chronic patient of diabetes and is under medication and constant review. That, although the Appellant is from Darjeeling, West Bengal, there is no reason for him to abscond having faced the trial while on Bail. That, his detention in prison would prejudice his family and hence, the convict be granted bail and his sentence suspended pending the hearing on appeal.

4. Learned Assistant Public Prosecutor objects to the petition for bail and suspension on sentence on grounds that after considering the fact of conviction there is likelihood that he could abscond and hence, the Petition be rejected.

5. I have given due consideration to the submissions put forth before me and perused the records as also the impugned Judgment and the Order of Bail under Section 389(3) of the Code of the Learned Trial Court.

6. From the records placed before me, it is evident that the Learned Trial Court while exercising its powers under Section 389(3) of the Code granted bail to the convict and suspended his sentence for two months from the date of conviction, i.e., 21-02-2024. Thereafter, the appeal has been filed before this Court on 16-04-2024 before the period of limitation for filing the appeal expired. However, on defects being notified by the Registry, the matter was re-submitted on 24-04-2024 after rectification of defects. The matter has been listed today. It is thus evident that from 20-04-2024 till today the Appellant despite the clear order of the Learned Trial Court that the Bail and suspension of sentence was for a period of two months, failed to take steps and remained at large, without surrendering to either the Learned Trial Court or before this Court, thereby flouting the order of the Learned Trial Court dated 21-02-2024 which had granted bail and suspended his sentence for a specific period of time and informed him of the details of the order. The Order specifies as follows;

“The convicts are informed that this bail is granted for a period of two months to enable them to file an appeal before the Hon’ble High Court and that they should do so within the prescribed period.”

7. In such circumstances, despite the grounds raised by the Learned Counsel for the Appellant, I am not inclined to consider the bail petition or suspension of his sentence, considering the conduct of the Appellant/convict who has failed to abide by the specific orders of the Learned Trial Court *supra* and flouted it with impunity.

8. I.A. No.01 of 2024 stands dismissed and disposed of accordingly.

9. The Appellant who is present in Court be taken into custody by the Sikkim Vigilance Police forthwith.

10. Learned Assistant Public Prosecutor to take appropriate steps in this context.

11. A copy of this Order be forwarded to the Learned Trial Court for information.

(Meenakshi Madan Rai)
Judge

26-04-2024