

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

DATED : 6th May, 2024

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

I.A. No.02 of 2024 in Crl.A. No.11 of 2024

Appellant/Petitioner : 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 Petitioner.

Mr. Yadev Sharma and Mr. Shakil Raj Karki, Additional Public
Prosecutors for the State-Respondent.

ORDER (ORAL)

Meenakshi Madan Rai, J.

1. I.A. No.02 of 2024 is an application under Section 389(1) of the Code of Criminal Procedure, 1973, filed by the Petitioner/convict seeking suspension of sentence and release on bail till the final disposal of the Appeal.

2. Learned Counsel for the Petitioner submits that the Petitioner was arrested in connection with this case on 03-09-2016 and enlarged on bail on 09-09-2016, vide Order in Crl. Misc. Case (Vig.) Bail No.60 of 2016 (*Madan Kumar Subba vs. State of Sikkim*) by the Court of the Special Judge, P.C. Act, East Sikkim, at Gangtok. The bail was granted by imposing certain terms and conditions. Thereafter, during the course of trial, the Petitioner consistently attended the Court proceedings without violating any terms and conditions laid down by the Learned Trial Court. That, he was convicted vide the Judgment in ST (VIG) Case No.02 of 2019, dated 21-02-2024, for the offences punishable under Section

420 read with Section 34 and Section 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. He 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 convicted Sections. Default clause of imprisonment on non-payment of fine was also imposed. That, thereafter, he was enlarged on bail by the Learned Trial Court in terms of Section 389(3) of the Cr.P.C. An Appeal against the impugned Judgment was filed before this Court which was admitted, however, the petition for suspension of sentence and enlargement of the Petitioner on bail was rejected, vide Order of this Court dated 26-04-2024 in I.A. No.01 of 2024, in CrI.A. No.11 of 2024, *inter alia* on grounds that the Petitioner/Convict had flouted the order of the Learned Trial Court with impunity, as sixty days allowed to him to file the Appeal and obtain bail from the Appellate Court was not adhered to and he continued to remain at large for almost sixty-six days. That, the circumstance arose out of the Learned Counsel for the Petitioner being remiss and the fault was not that of the convict who is an elderly person, aged about 66 years. That, he is a chronic patient of diabetes and is under medication and constant review. That, original copies of the medical report have also been filed herein. That, although the Petitioner is from Darjeeling, West Bengal, there is no risk of him violating the terms and conditions, if enlarged on bail, as his conduct before the Learned Trial Court would reveal. That, he is a respectable citizen and has no reason to abscond. That, in fact, his

detention in prison would prejudice his family as his son and daughter who were working in the State of West Bengal had to leave their service in order to be with their mother in Sikkim, who is alone after the incarceration of the Petitioner. Hence, the Petition be considered sympathetically on the grounds raised and the Petitioner be released on bail pending the Appeal and his sentence be suspended accordingly.

3. *Per contra*, Learned Additional Public Prosecutor submits that he has no objection to the petition as the grounds advanced by the Learned Counsel are reasonable. That, the Petitioner is a senior citizen, ailing and in requirement of constant medical supervision, besides admittedly, it is the fault of the Counsel for not taking timely steps in filing the petition under Section 389 of the Cr.P.C. and the Appeal. That, he be enlarged by imposition of certain conditions.

4. I have heard and considered the grounds put forth by Learned Counsel for the parties. I have considered the conduct of the Petitioner during the period when he was on bail before the Learned Trial Court, his medical condition supported by documents and his age.

5. In view of the said grounds, I am of the considered opinion that this is a fit case where the Petitioner can be enlarged on bail subject to the following conditions;

- (i) He shall furnish PB&SB of ₹ 25,000/- (Rupees twenty-five thousand) only, each, with one solvent surety, to the satisfaction of the Learned Court of the Special Judge, P.C. Act, East Sikkim, at Gangtok.

- (ii) He shall, however, not leave the State without the prior permission of the said Court.
- (iii) He shall appear before this Court on all dates fixed for hearing of the Appeal.
- (iv) Should he fail to report to this Court on the dates fixed, his bail bonds shall stand cancelled and he shall be taken into custody forthwith.

6. Sentence imposed by the Learned Trial Court against the Petitioner vide the impugned Order on Sentence dated 21-02-2024 accordingly stands suspended till further orders.

7. The observations made hereinabove are only for the purposes of the instant I.A. and shall in no manner 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. Copy of this Order also be forwarded to the Jail Authority at the Central Prison, Rongyek, by e-mail for information and necessary steps. A soft copy of the Order be also made over to the Prisoner by the Jail Superintendent.

(Meenakshi Madan Rai)
Judge
06-05-2024