

HIGH COURT OF SIKKIM
Record of proceedings

CRL.A. No.13 of 2025

MUZAFFAR HUSSAIN ALIAS BABU APPLICANT

VERSUS

STATE OF SIKKIM RESPONDENT

Date: 25.08.2025

CORAM :

HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, J.

For Applicant : Mr. Rahul Rathi, Advocate.
Ms. Rupa Agarwal, Advocate.
For Respondent : Ms. Pema Bhutia, Assistant Public
Prosecutor.

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I.A. No.01/2025

1. The applicant was convicted vide Judgment dated 25.03.2025 and sentenced vide Order on Sentence dated 26.03.2025 under Section 7 punishable under Section 8 of the Protection of Children and Sexual Offences Act, 2012 (POCSO Act) with rigorous imprisonment for a term of three years and to pay a fine of Rs.2000/-; and further under Section 11(iv) punishable under section 12 of the POCSO Act for rigorous imprisonment for a term of one year and fine of Rs.2000/-.
2. The applicant is aggrieved by the Judgment and Order on Sentence and has preferred the accompanying appeal which is pending consideration before this Court since 25.04.2025.
3. Along with the appeal, the applicant has also moved the application under Section 389 (1) of the Code of Criminal Procedure, 1973 (Cr.P.C.) praying for suspension of sentence and

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grant of bail. This application was filed on 25.04.2025. No written response has been filed by the State.

4. The learned counsel for the applicant submits that the applicant was arrested on 22.02.2023 and later released on bail by the learned Special Judge, (POCSO Act, 2012), Gangtok (the learned Special Judge) vide order dated 19.10.2023. Thereafter, he remained on bail until his conviction, thereby having undergone incarceration for a period of 392 days. The applicant has been on bail since 19.10.2023 for 17 months.

5. It is his submissions that during the entire period when he was on bail he did not jump bail and abided by the conditions imposed therein. It is submitted that the maximum period of conviction is three years out of which he has already served 392 days. In such circumstances he seeks suspension of sentence and bail.

6. The learned Assistant Public Prosecutor vehemently object to the grant of bail or the suspension of sentence on the ground that the applicant has also been convicted under the provisions of the POCSO Act for offences committed against a minor. The learned Assistant Public Prosecutor also draws the attention of this Court to the fact that the applicant is not from this State and it may be difficult to secure his presence during the pendency of the appeal or at the time of judgment. The learned counsel for the applicant rejoins on this aspect and submits that the applicant is married to a local resident and during the entire period when he was on bail he has been abiding all the

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conditions imposed and has not misused the liberty granted to him.

7. Additionally in the application the applicant states that he is the only earning member of his family comprising of his aged parents, wife and two children. It is stated that the applicant is a mason by profession and is a daily wage earner running his livelihood by earning on a daily basis and due to his incarceration his family members are facing hardships. It is also submitted that he is not a habitual offender and has no criminal records.

8. The arrest memo which has been filed along with the application records the observation of the police through known police records. It records that he is not dangerous; not generally armed; does not have past criminal records; he is unlikely to escape bail; he is not wanted in any other case; he has not previously escaped any bail; he does not operate with accomplice; he is not a recidivist. The learned Assistant Public Prosecutor does not contend otherwise.

9. Considering the entirety of the facts and circumstances of the case, this Court is of the view that the applicant's conviction and sentence may not be suspended but he is entitled to bail. Accordingly, bail is granted subject to the following:-

- (i) The applicant shall not leave the State of Sikkim or travel beyond the boundaries of the Gangtok District where he presently resides and works for gain without the leave of the learned Special Judge, Gangtok.

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- (ii) He shall appear before this Court for judgment in the present appeal or as and when required to appear by this Court during the hearing of the appeal.
- (iii) He shall not contact or approach the victim or her relatives directly or indirectly.
- (iv) He shall furnish reliable surety to the satisfaction of the learned Special Judge.
- (v) For the purpose of (iv) above he shall appear on 27.08.2025 before the learned Special Judge as suggested by the learned counsel for the parties. As the applicant is in custody let the jail authorities produce the applicant before the learned Special Judge as directed.

10. A copy of this order shall be sent by e-mail immediately on preparation today to the jail authorities along with a copy to the learned Special Judge, certified copies to follow in haste. Accordingly, I.A. No. 01 of 2025 stands disposed.

Judge