

THE HIGH COURT OF SIKKIM: GANGTOK
(Criminal Appellate Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

I.A. No. 01 of 2025
IN
Criminal Appeal No. 20 of 2025

Sachin Rai,
Aged about 32 years,
Son of Late Harka Bahadur Rai,
Resident of Upper Rakdong Silling,
District Gangtok, Sikkim.

At present: Sikkim State Central Jail, Rongyek, Sikkim.

..... Applicant

Versus

State of Sikkim.

.....Respondent

**Application for bail and suspension of sentence under
section 430(1) of the Bharatiya Nagarik Suraksha Sanhita
2023.**

Appearance:

Mr. N. Rai, Senior Advocate with Ms. Tara Devi Chettri, Advocate for the Applicant.

Mr. Yadev Sharma, Additional Public Prosecutor for the State-Respondent.

Date of Hearing	:	30.10.2025
Date of Order	:	30.10.2025
Date on which uploaded	:	31.10.2025

O R D E R (ORAL)

Bhaskar Raj Pradhan, J.

1. The applicant has filed an appeal under section 415(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (the BNSS).

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He has been convicted vide impugned judgment dated 27.05.2025 and sentenced vide order dated 30.05.2025 to undergo rigorous imprisonment for a term of three years and fine of Rs.2000/- for the offence under section 7 punishable under section 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. As the applicant was convicted by the learned Special Judge on 27.05.2025 and he was taken into custody on 27.05.2025. He has been in custody since then.

3. The application for suspension of sentence is under section 430(1) of the BNSS, 2023 which provides that pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond or bail bond.

4. The learned Senior Counsel for the applicant submits that conviction of the applicant is for having committed sexual assault and not for any graver offence under the POCSO Act. He submits that in such cases the suspension of sentence can be considered by the Appellate Court liberally unless there are exceptional circumstances. In support of his submissions he

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cites the judgment of the Supreme Court in ***Bhagwan Rama Shinde Gosal & Anr. vs. State of Gujarat***¹.

5. Vehemently objecting the suspension of the applicant's sentence and his release on bail, Mr. Yadev Sharma, learned Additional Public Prosecutor cites yet another judgment of the Supreme Court in ***AAsif @ Pasha vs. The State of U.P. & Ors.***² in which it was held:

“19. It is unfortunate that the High Court while passing the impugned order failed to take into consideration the well-settled principles of law governing the plea of suspension of sentence on fixed term is concerned. What the High Court did was to reiterate the entire case of the prosecution and the oral evidence which has come on record.

20. That is not the correct approach.

21. The High Court should have been mindful of the fact that the appeal is of the year 2024. Appeal of 2024 is not likely to be taken up in near future. Ultimately, if 4 years are to elapse in jail the same would render the appeal infructuous and that would be travesty of justice.

22. In such circumstances, referred to above, we set aside the impugned order and remand the matter to the High Court for fresh consideration of the plea of the appellant - herein for suspension of the substantive order of sentence keeping in mind the principles of law as explained by us aforesaid. The High Court shall keep in mind that the sentence is for a fixed term, i.e. 4 years and it is only if there are any compelling circumstances on record to indicate that the release of the appellant would not be in public interest that the Court may order accordingly.”

6. The learned Additional Public Prosecutor submitted that this was a case of a conviction under section 7 punishable under section 8 of the POCSO Act for sexual assault on a 14 years old child and therefore that itself would be compelling

¹ (1999) 4 SCC 421

² 2025 INSC 944

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circumstance on record that the release of the applicant would not be in public interest. The learned Additional Public Prosecutor submits that both the victim and the applicant are neighbours hailing from the same village and therefore, releasing the applicant would disturb the society and also the victim. The learned Senior Counsel for the applicant submits that the applicant has a relative who stays in Gangtok and he is ready to stay with him until the case is finally decided.

7. The record reveals that since his conviction on 27.05.2025 the applicant has been in jail for five months. The appeal is unlikely to be heard before the 14.12.2025 from which date this Court goes on winter vacation. As the conviction of the applicant is for a fixed term of three years only prejudice would be exceptional if the applicant succeeds on a reversal which could be determined only on final hearing. The applicant has been convicted for touching the victim inappropriately. The victim's statement is questioned by the learned Senior Advocate on the ground that it conflicts with her statement recorded under section 164 Cr.P.C. The appeal needs to be examined and the evidence scrutinised.

8. The learned Additional Public Prosecutor could not point any other compelling circumstances on record to indicate that the release of the applicant would not be in public interest. Thus keeping in mind the parameters of the law laid down by the Supreme Court the provision of law, this Court is of the view

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that the applicant's sentence may be suspended and he be released on bail on the following conditions:

- (1) The applicant shall furnish bail bond of Rs.50,000/- with two reliable sureties to the satisfaction of the learned Special Judge and for the said purpose the jail authorities shall present the applicant before the learned Special Judge at the earliest.
- (2) The applicant shall not make any attempt to meet or influence the victim or any of her relatives or close ones.
- (3) During the period of bail the applicant shall not travel beyond the jurisdiction of the State of Sikkim without written orders of the concerned learned Special Judge, Gangtok.
- (4) The applicant shall attend and appear before this Court on the next date of hearing, as and when required and certainly on the judgment day for which he shall keep in touch with his counsel.
- (5) The applicant shall report to the Station House Officer (SHO) Sadar Police Station, Gangtok on every alternate Monday from the date of the release till the pronouncement of judgment.

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

10. A copy of this order shall be forwarded to the learned Special Judge, POCSO, Gangtok as well as the Jail Superintendent, Rongyek, Gangtok both by email as well as in the usual course. A copy shall also be granted to the learned

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counsel for the applicant to enable him to provide effective assistance to the applicant.

(**Bhaskar Raj Pradhan**)
Judge

Approved for reporting : **Yes**
Internet : **Yes**
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