

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

DATED : 12th October, 2023

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

I.A. No.01 of 2023 in CrI.A. No.21 of 2023

Appellant/Petitioner : Saroj Pradhan

versus

Respondent : State of Sikkim

Application under Section 389(1) and (2)
of the Code of Criminal Procedure, 1973

Appearance

Mr. N. Rai, Senior Advocate with Mr. Yozan Rai, Ms. Tara Devi Chettri, Advocates for the Petitioner.

Mr. S. K. Chettri, Additional Public Prosecutor for the State-Respondent.

ORDER (ORAL)

Meenakshi Madan Rai, J.

1. Heard on I.A. No.01 of 2023 which is an application under Section 389 (1) and (2) of the Code of Criminal Procedure, 1973, filed by the Petitioner seeking to be enlarged on bail and suspension of the sentence imposed on him.

2. Learned Senior Counsel appearing for the Petitioner submits that he has filed an Appeal before this Court assailing the impugned Judgment and Order on Sentence, dated 17-08-2023, passed by the Learned Special Judge (POCSO Act, 2012), at Gangtok, Sikkim, in ST (POCSO) Case No.21 of 2021 (*State of Sikkim vs. Saroj Pradhan*). He submits that the Petitioner was convicted under Section 9(m) of the Protection of Children from Sexual Offences Act, 2012 (hereinafter, "POCSO Act, 2012"), punishable under Section 10 of the POCSO Act, 2012 and sentenced to five years simple imprisonment with fine of ₹ 5,000/- (Rupees five thousand) only, with default clause of imprisonment. The allegation therein was that he had kissed the minor victim. That, the Petitioner was on bail throughout the course of trial and

did not violate the bail conditions. That, following his conviction he has been in the correctional home (Central Prison) at Rongyek, since 17-08-2023. That, he has elderly parents, his father being aged about 75 years, while his mother is about 68 years old, who are required to be taken care of by the Petitioner. That, pending the Appeal before this Court he may be enlarged on bail considering his conduct during the trial, where despite being on bail he unfailingly appeared on all dates fixed. That, he shall also abide by all terms and conditions imposed by this Court if enlarged on bail. Learned Senior Counsel has placed reliance on **Suresh Kumar and Others vs. State (NCT of Delhi)**¹ wherein the Hon'ble Supreme Court while referring to the decision of **Bhagwan Rama Shinde Gosai and Others vs. State of Gujarat**² held that when a convicted person is sentenced for a fixed period and when he files an appeal under any statutory right, suspension of sentence can be considered by the Appellate Court liberally, unless there are exceptional circumstances.

3. Learned Additional Public Prosecutor objects to the prayer for bail and invited the attention of this Court to **Suzanne Louise Martin vs. State of Rajasthan and Another**³, wherein the Supreme Court while considering the release of the Appellant who was convicted under Section 376 of the Indian Penal Code, 1860, held that the perpetrator of the offence ought not to have been released on bail. Hence, this Court also refrain from granting bail to the Petitioner considering that he has been convicted of a sexual offence against a minor, much like the offence in **Suzanne Louise Martin** (supra).

¹ (2001) 10 SCC 338

² (1999) 4 SCC 421

³ (2009) 4 SCC 376

4. I have given due consideration to the submissions put forth.

5. In view of the facts placed before me and considering the conduct of the Petitioner, viz., that while on bail during trial he continued to appear before the Learned Trial Court, 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) *The Petitioner shall furnish PB&SB of ₹ 50,000/- (Rupees fifty thousand) only, each, with one solvent surety, to the satisfaction of the Learned Special Judge (POCSO Act, 2012), at Gangtok, Sikkim.*
- (ii) *He shall, however, not leave the station without the prior permission of the Learned Special Judge (POCSO Act, 2012), at Gangtok, Sikkim.*
- (iii) *He shall appear before this Court on all dates fixed.*
- (iv) *Should the Petitioner fail to report to this Court on the dates fixed, his bail bonds stand cancelled and he shall be taken into custody forthwith.*

6. Sentence imposed by the Learned Trial Court against the Petitioner stands suspended till further orders.

7. The observations made hereinabove are only for the purposes of the instant bail application and shall in no manner be construed as findings on the merits of the Appeal.

8. I.A. No.01 of 2023 is allowed and disposed of accordingly.

9. A copy of this Order be forwarded to the Learned Trial Court for information and compliance.

10. Copy of this Order also be forwarded to the Jail Authority at the Central Prison, Rongyek, for information.

(Meenakshi Madan Rai)
Judge

12-10-2023

Approved for reporting : **Yes**