

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
Crl. A. No. 21 of 2025

Mr. Buddha Raj Rai,
Aged about 33 years,
S/o Late Ram Bahadur Rai,
R/o Lower Aho, Pakyong, Sikkim.

(Presently at State Central Jail Rongyek).
..... Applicant

Versus

State of Sikkim.
..... Respondent

An application for Bail and suspension of sentence under Section 430(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023.

Appearance:

Ms. Neha Gupta, Advocate for the Applicant.
Mr. Thinlay Dorjee Bhutia, Public Prosecutor.
Mr. Yadev Sharma, Additional Public Prosecutor for
the State-Respondent.

Date of Hearing : 16.09.2025
Date of Order : 16.09.2025

O R D E R (ORAL)

Bhaskar Raj Pradhan, J.

1. An application for suspension of sentence and bail under Section 430(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (the BNSS) has been filed by the applicant on 05.07.2025 on the following grounds:-

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- (i) That the applicant has been convicted under section 9(l) of the Protection of Children from Sexual Offences Act, 2012 (the POCSO) and sentenced to a fixed term of five years and to pay a fine of Rs.2000/- vide sentence dated 27.06.2025.
- (ii) That the applicant is a permanent resident of Sikkim having his home at Lower Aho, Pakyong, Sikkim.
- (iii) That during the trial of the case the applicant was on bail and he did not violate any of the condition of bail.
- (iv) That the applicant has a good case to succeed on merits and shall suffer irreparable loss if he is not allowed bail and his sentence suspended.
- (v) That the applicant is a driver by occupation and is the only bread-winner in his family.
- (vi) That the applicant has a wife, minor daughter and ailing aged mother who recently had undergone surgery for removal of gall bladder stone and she also suffers from diabetes, hypertension and is under constant medications.
- (vii) That the applicant being the sole bread winner had been looking after his ailing mother and taking care of her.
- (viii) That the applicant would not abscond if granted bail.

2. The application is accompanied and supported by several documents including the final diagnosis of the Department of General Surgery of Central Referral Hospital, Sikkim Manipal University dated 10.02.2025 relating to Mrs. Ran Maya Rai and other connected medical papers of the applicant's mother.

3. The applicant has also placed on record his Certificate of Identification, transfer certificate issued by the Head Master of the Government Secondary School, Aho Shanti and '*parcha khatiyan*' of the land recorded in the name of his father.

4. The learned Public Prosecutor appearing for the State-respondent objects to this application. It is pointed out that the victim was a minor during the time of the commission of sexual assault and that the applicant has been convicted on examination of the evidence.

5. The learned Public Prosecutor relies upon the judgment of the Supreme Court in ***Preet Pal Singh vs. State of Uttar Pradesh & Anr.***¹ in which it has been held as under:

“35. There is a difference between grant of bail under Section 439 CrPC in case of pre-trial arrest and

¹ (2020) 8 SCC 645

suspension of sentence under Section 389 CrPC and grant of bail, post conviction. In the earlier case, there may be presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court in *Dataram Singh v. State of U.P.* [*Dataram Singh v. State of U.P.*, (2018) 3 SCC 22 : (2018) 1 SCC (Cri) 675] However, in case of post-conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the court considering an application for suspension of sentence and grant of bail, is to consider the *prima facie* merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) CrPC.”

6. Per contra the learned counsel for the applicant cites ***Bhupatji Sartajji Jabraji Thakor vs. The State of Gujarat***² in which vide order dated 05.07.2024 the Supreme Court has held:

“7. There is a fine distinction between a sentence imposed by the trial court for a fixed term and sentence life imprisonment. If a sentence is for a fixed term, ordinarily, the appellate court may exercise its discretion to suspend the operation of the same liberally unless there are any exceptional circumstances emerging from the record to decline. However, when it is a case of life imprisonment, the only legal test which the Court should apply is to ascertain whether there is anything palpable or apparent on the face of the record on the basis of which the court can come to the conclusion that the conviction is not sustainable in law and that the convict has very fair chances of succeeding in his appeal. For applying such test, it is also not permissible for the court to undertake the exercise of re-appreciating the evidence. The emphasis is on the word “palpable” and the expression “apparent on the face of the record”.

² 2024 SCC OnLine SC 3320

7. On reading the two opinions of the Supreme Court it is apparent that in a case of post conviction bail and suspension of sentence what is to be considered is *prima facie* merits of the appeal coupled with other factors and there should be strong compelling reasons for grant of bail notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail. It is also necessary to consider that if a sentence is for a fixed term, the Court may exercise its discretion to suspend the operation of the same unless there are exceptional circumstances emerging from the record to decline the same.

8. The learned counsel for the applicant took this Court through the deposition of the victim as well as the mother which has been placed on record and pointed out various discrepancies in their depositions. The learned counsel also pointed out that various material objects have not been identified by the victim and search and seizure not proved.

9. It is seen that the conviction of the applicant under section 9(l) of the POCSO Act is based on the statement of the victim that he had touched her breast twice in his taxi in the same journey. Section 9(l) of the POCSO Act relates

to offences of sexual assault on a child more than once or repeatedly. The applicant has been sentence for fixed term of five years only. It is settled law that when a convicted person is sentenced to a fixed period of sentence 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. There are no exceptional circumstances available on record compelling this Court not to consider suspension of sentence liberally. There are no statutory restrictions against suspension of sentence on the facts of this case ingrained in section 430 of the BNSS. It is not a sentence of life imprisonment where the consideration of suspension of sentence could be differently approached. Although criminal appeals are heard expeditiously it would certainly take some time before the appeal is finally decided. The criminal appeal has been filed by the applicant with the hope that the impugned judgment would be reversed. Finally when the criminal appeal is heard and decided if it leads to a reversal of the conviction the time suffered by the applicant would be irreversible. Therefore, to make the appeal right, meaningful and effective, this Court is of the opinion that

this is a fit case to liberally consider suspension of the applicant's sentence.

10. The applicant has also made out a strong case for grant of bail. The judgment of the learned Special Judge is dated 26.06.2025. The appeal was filed on 05.07.2025. The applicant has been convicted for aggravated sexual assault on the victim under section 9(l) of the POCSO Act punishable under section 10 of the POCSO Act for inappropriately touching the victim. He has been sentenced for an imprisonment for a term of five years and fine of Rs.2000/-. As the criminal appeal has been recently filed paper-books have yet not been prepared and it would take some time to do so. It is apparent that the applicant has an ailing mother and there is no compelling reason to doubt his assertion that he also has a wife and a minor daughter to take care of. The applicant asserts that he is a permanent resident of Sikkim which is also reflected in the certificate of identification filed by him. It is apparent that his family is based in Sikkim and has landed property here as well. The applicant asserts that he is a driver by profession and the sole bread-winner of his family. The applicant's prayer for grant of bail seems a genuine one considering the above multiple factors. The sentence

against the applicant is dated 27.06.2025 which means that he has already served more than two and half months of the five years sentence. The applicant would have suffered incarceration during the period of investigation and trial which has been directed by the learned Special Judge to be set off. As it is a fixed term of five years sentence, considering the over all aspects of the case, this Court is of the view that the sentence may be suspended and bail should be granted so that he is able to contest this appeal more effectively. It is so ordered.

11. It is directed that the applicant shall be released on bail on the following conditions:-

- (i) 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.
- (ii) The applicant shall not make any attempt to meet or influence the victim or any of her relatives or close ones.
- (iii) The applicant shall attend and appear before this Court as and when required and certainly on the Judgment day for which he shall keep in touch with his counsel.

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(iv) He shall present himself every fortnight till the disposal of the present appeal before the jurisdictional Station House Officer, Ranipool, Police Station who shall keep a record and make it available to the court.

(v) The applicant shall furnish bail bond of Rs.10,000/- 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 as soon as possible and latest by 18.09.2025.

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

13. 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 counsel for the applicant to enable her to provide effective assistance to the applicant.

**(Bhaskar Raj Pradhan)
Judge**

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

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