

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

DATED : 4th December, 2024

**DIVISION BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE**

I.A. No.01 of 2024 in CrI.A. No.25 of 2024

Appellant/Petitioner : Jeet Hang Subba

versus

Respondent : State of Sikkim

Application under Sections 389(1) of the
Code of Criminal Procedure, 1973

Appearance

Mr. Jorgay Namka, Senior Advocate (Legal Aid Counsel) with Ms. Mingma Lhamu Sherpa, Advocate (Legal Aid Counsel) for the Appellant/Petitioner.

Mr. Yadev Sharma, Additional Public Prosecutor with Mr. Sujan Sunwar, Assistant Government Advocate for the State-Respondent.

ORDER

Meenakshi Madan Rai, J.

1. I.A. No.01 of 2024 is an application under Section 389(1) of the Code of Criminal Procedure, 1973 (hereinafter, "Cr.P.C.") seeking Bail and suspension of Sentence for the Petitioner/Appellant.

2. Learned Additional Public Prosecutor has filed written objection to the Bail application.

3. The Petitioner, then aged about twenty-seven years was convicted by the Court of the Learned Special Judge (POCSO Act, 2012), Soreng, Sikkim, vide its impugned Judgment dated 31-07-2024, in ST (POCSO) Case No.01 of 2024 (*State of Sikkim vs. Jeet Hang Subba*) under Section 376(1) of the Indian Penal Code, 1860 (hereinafter, the "IPC") and Section 3(a) punishable under Section 4(1) of the Protection of Children from Sexual

Offences Act, 2012 (hereinafter, the "POCSO Act"). He was sentenced to undergo simple imprisonment for a term of ten years and to pay fine of ₹ 5,000/- (Rupees five thousand) only, for the offence under Section 376(1) of the IPC and simple imprisonment for a term of ten years and fine of ₹ 5,000/- (Rupees five thousand) only, under Section 3(a) of the POCSO Act, with default stipulations.

4. Before this Court, it is urged by Learned Senior Counsel for the Petitioner that the Petitioner is a young man aged about twenty-seven years, who is married, has a baby aged about eighteen months and elderly parents all of whom were completely dependent on the Petitioner. That, in fact the conviction of the Petitioner is erroneous for the reason that, the DNA paternity test failed to determine that the Petitioner was the biological father of the alleged foetus. The Petitioner was thus wrongly foisted with the offence. In fact, admittedly the result being negative, the Expert was not even sought to be examined by the Prosecution before the Learned Trial Court. The age of the victim also remained unproved as there was vacillating evidence of the victim, her sisters and her parents pertaining to her age. That, the victim in her evidence has admitted that the sexual act between herself and the Petitioner was consensual and the question of convicting the Petitioner for the offence of rape therefore does not arise. That, considering the entire facts and circumstances, the Petitioner has a *prima facie* good case on merits and in such circumstances the application be given due consideration and his sentence suspended and the Petitioner be enlarged on Bail. That, he is a permanent resident of Sikkim with

his home and hearth here and a family who is dependent on him, consequently there is no likelihood of him absconding.

5. Objecting to the prayers, it was contended by Learned Additional Public Prosecutor that the Petition for Bail deserves no consideration as the age of the victim has been established by the Prosecution and the Learned Trial Court on appreciating the evidence on record concluded that the victim was indeed a minor. That, in such circumstances releasing the Petitioner on Bail would be travesty of justice since all material facts and circumstances have been considered by the Learned Trial Court and the Judgment of conviction handed out. Fortifying his submissions with the decision of the Supreme Court in ***Preet Pal Singh vs. State of Uttar Pradesh and Another***¹, Learned Additional Public Prosecutor submitted that the prayer for Bail, post conviction, stands on a different footing than one made prior to or pre-trial, as in that circumstance the Prosecution case has not been proved beyond reasonable doubt. In a case of conviction, as in the instant one, all materials pointing to the guilt of the Petitioner are considered and hence stands on a different footing. The application thereby deserves a dismissal.

6. We have given due consideration to the gamut of facts and circumstances placed before us and heard the matter at length and in detail. In view of the same, we are disinclined to consider enlarging the Petitioner on Bail.

7. I.A. No.01 of 2024 accordingly stands rejected and disposed of.

8. The observations made hereinabove are not to be construed as findings on the merits of the Appeal.

¹ (2020) 8 SCC 645

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

10. Copy of this Order also be made over to the Petitioner through the Jail Superintendent, Central Prison, Rongyek and to the Jail Authority at the Central Prison, Rongyek, for information.

(Bhaskar Raj Pradhan)
Judge
04-12-2024

(Meenakshi Madan Rai)
Judge
04-12-2024

Approved for reporting : **Yes**