

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

DATED : 19th October, 2023

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

I.A. No.01 of 2023 in CrI.A. No.26 of 2023

Appellant/Petitioner : Anga Bahadur Gurung

versus

Respondent : State of Sikkim

Application under Section 389(1) read with
Section 482 of the Code of Criminal Procedure, 1973

Appearance

Mr. Umesh Ranpal, Advocate (Legal Aid Counsel) 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 application filed by the Appellant under Section 389(1) read with Section 482 of the Code of Criminal Procedure, 1973, seeking suspension of the execution of the impugned Judgment and Order on Sentence, both dated 29-08-2023, passed by the Learned Special Judge (POCSO), West Sikkim, at Gyalshing, in S.T. (POCSO) Case No.08 of 2022 (*State of Sikkim vs. Anga Bahadur Gurung*).

2. The Petitioner was convicted under Section 7 punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to three years simple imprisonment with fine of ₹ 5,000/- (Rupees five thousand) only, with default clause of imprisonment. For Section 354A(2) of the Indian Penal Code, 1860, the Appellant was sentenced to undergo rigorous imprisonment for one year. The allegation therein was that the Appellant had sexually harassed the minor victim.

3. Learned Counsel for the Appellant submits that during the course of trial the Appellant unerringly appeared before the Learned Trial Court on all dates fixed for trial, as he was on bail. That, he is the only earning member in his family working in the Horticulture Department, Government of Sikkim and that if he is taken into custody his family shall suffer irreparably. That, in consideration of the conduct of the Appellant during the trial he may be enlarged on bail and he is willing to abide by all the terms and conditions imposed.

4. Learned Additional Public Prosecutor for the State-Respondent while vehemently objecting to the Petition for bail contended that the offence is a heinous offence committed by an adult on a minor, who was a school going student. That, the Learned Trial Court has convicted him of the offence and in such circumstances, the Petition for bail deserves no consideration and the same be dismissed.

5. I have heard the submissions and considered the grounds put forth by Learned Counsel for the parties.

6. In *Bhagwan Rama Shinde Gosai and Others vs. State of Gujarat*¹ it was 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.

7. 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;

¹ (1999) 4 SCC 421

- (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), West Sikkim, at Gyalshing.*
- (ii) *He shall, however, not leave the station without the prior permission of the Learned Special Judge (POCSO), West Sikkim, at Gyalshing.*
- (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.*

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

9. 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.

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

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

(Meenakshi Madan Rai)
Judge
19-10-2023

Approved for reporting : **Yes**