

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

Dated : 22nd November, 2023

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

I.A. No.01 of 2023 in CrI. A. No.29 of 2023

Appellant : Bed Prakash Adhikari

versus

Respondent : State of Sikkim

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

Appearance

Mr. Rajendra Upreti and Ms. Kanchan Rai, Advocates for the Appellant.

Mr. Thinlay Dorjee Bhutia, Additional Public Prosecutor with Mr. Sujan Sunwar, Assistant 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 filed by the Appellant under Section 389 read with Section 482 of the Code of Criminal Procedure, 1973.

2. Learned Counsel for the Appellant submits that the Appellant was convicted and sentenced to imprisonment in terms of the impugned Judgment and Order on Sentence, both dated 30-09-2023, passed by the Learned Special Judge (POCSO Act, 2012), at Mangan District, Sikkim, in S.T.(POCSO) Case No.02 of 2023, *State of Sikkim vs. Bed Prakash Adhikari*. That, the Prosecution has in fact failed to prove their case and all relevant grounds shall be agitated during the hearing on the Appeal pending before this Court. That, the Appellant has already undergone rigorous imprisonment of seven months till date and incarcerating him for a longer period would be to the prejudice of his family of which he is

the sole earning member. That apart, he has two minor children who are uncared for presently due to the ill-health of his wife. He is a permanent resident of Lingi Payoung, Namchi District, Sikkim and would not abscond if enlarged on bail and will abide by any bail condition imposed by this Court.

3. Opposing the Bail Petition, Learned Additional Public Prosecutor submits that the victim was a child of five years at the time of the offence while the Appellant was a grown adult of 47 years. That, in such circumstances he deserves no consideration and ought not to be enlarged on bail in view of the gravity of the offence.

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

5. In view of the facts and circumstances placed before this Court, I am not inclined to grant bail to the Appellant who has been convicted of the offence under Section 9(m) punishable under Section 10 of the Protection of Children from Sexual Offences Act, 2012.

6. Petition for Bail stands rejected and disposed of accordingly.

(Meenakshi Madan Rai)

Judge
22-11-2023