

# THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

DATED : 28<sup>th</sup> October, 2024

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

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I.A. No.01 of 2024 in CrI.A. No.29 of 2024

**Appellant/Petitioner** : Yeshay Lepcha

***versus***

**Respondent** : State of Sikkim

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

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**Appearance**

Mr. Sudesh Joshi, Advocate with Mr. Saurav Singh, Advocate for the Petitioner.

Mr. Thinlay Dorjee Bhutia, Public Prosecutor for the State-Respondent.

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## **ORDER**

Meenakshi Madan Rai, J.

**1.** Heard on I.A. No.01 of 2024 which is an application under Section 389(1) of the Code of Criminal Procedure, 1973 (hereinafter, "Cr.P.C."), filed by the Petitioner/Appellant/Convict seeking suspension of the sentence imposed on him by the Learned Trial Court and his enlargement on Bail. The Prosecution has filed its response to the Bail application.

**2.** Learned Counsel for the Petitioner submits that an Appeal has been filed before this Court by the Petitioner assailing the Judgment dated 29-08-2024 and Order on Sentence dated 30-08-2024 of the Court of the Learned Special Judge (POCSO Act), Mangan, Sikkim, in Sessions Trial Case No.01 of 2024, whereby the Petitioner was convicted under Sections 9(l) and 9(n) of the Protection of Children from Sexual Offences Act, 2012 (hereinafter, "POCSO Act, 2012") both punishable under Section 10 of the same Act and under Section 376(2)(n) of the Indian

Penal Code, 1860 (hereinafter, "IPC"). He was sentenced to imprisonment and fine vide the impugned Order on Sentence. That, the Petitioner upon his conviction was taken into custody on 29-08-2024 and is presently lodged at the Central Prison, Rongyek, Sikkim. That, the Petitioner has a *prima facie* good case of succeeding in the Appeal the Prosecution having failed to prove its case beyond reasonable doubt. Regardless, the Learned Trial Court pronounced the impugned Judgment on hypothesis and conjectures. That, the Petitioner has no criminal antecedents and he is the only earning member in his family comprising of his wife and five minor children, apart from which he is a patient of hypertension and diabetes. That, he will abide by all conditions imposed by the Court and will not abscond if enlarged on Bail. Hence, the Petition be considered and allowed.

**3.** Learned Public Prosecutor objecting to the Petition for Bail contended that the Petitioner has been found guilty by the Learned Trial Court and therefore the question of him being entitled to Bail does not arise. That, the Supreme Court in ***Preet Pal Singh vs. State of Uttar Pradesh and Another***<sup>1</sup> had observed that there is a difference between grant of Bail under Section 439 of the Cr.P.C. in case of pre-trial arrest and suspension of sentence under Section 389 Cr.P.C. and grant of Bail, post conviction. That, in the earlier case, there may be a 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 ground that Bail is the rule and jail is an exception. That, however, in case of post-conviction Bail, by suspension of operation of the sentence, there is a finding

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<sup>1</sup> (2020) 8 SCC 645

of guilt and the question of presumption of innocence does not arise. The principle of Bail being the rule and jail an exception is not attracted, once there is conviction upon trial. In such a circumstance, Bail is granted only if there are strong and compelling reasons, notwithstanding an order of conviction.

**4.** Having given due consideration to the submissions advanced before us, it may relevantly be pointed out that although the Petitioner may be suffering from several medical conditions, however, a Clinic exists in the Jail premises with a visiting Doctor and a full time Nurse and medication are available as and when required.

**5.** That having been said, we notice that the Petitioner was convicted for sexual offences against a minor child, the offences being heinous, we are not inclined to either suspend the sentence or enlarge the Petitioner on Bail.

**6.** I.A. No.01 of 2024 is accordingly rejected and disposed of.

**7.** The observations made hereinabove are confined to the purposes of the instant Bail application and shall in no manner be construed as findings on the merits of the Appeal.

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

**9.** 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**

28-10-2024

**( Meenakshi Madan Rai )**

**Judge**

28-10-2024

Approved for reporting : **Yes**