

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

DATED : 30th October, 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.30 of 2024

Appellant/Petitioner : Sandeep Gajmer @
Sandeep Gazmer

versus

Respondent : State of Sikkim

Application under Sections 389(1) and (2)
of the Code of Criminal Procedure, 1973

Appearance

Mr. N. Rai, Senior Advocate with Mr. Yozan Rai, Advocate for the Appellant/Petitioner.

Mr. Thinlay Dorjee Bhutia, 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) and (2) 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 from this Court. The Prosecution has filed its response to the Bail Application.

2. The Petitioner was convicted vide the impugned Judgment, dated 21-08-2024 and Order on Sentence dated 22-08-2024 by the Court of the Learned Special Judge (POCSO Act, 2012), under Section 376(1) of the Indian Penal Code, 1860, in ST (POCSO) Case No.14 of 2022 (*State of Sikkim vs. Sandeep Gajmer alias Sandeep Gazmer*).

3. Learned Senior Counsel for the Petitioner submits that the Petitioner had been living with his elderly parents, both of

whom are indisposed presently due to various ailments. That, his elder brother is married and living with his own family separately. The Petitioner's wife is an asthma patient and also suffering from anxiety disorder. Hence, there is none to take care of his family. That, the conviction was based on the sole testimony of the victim, which the medical evidence did not support as the Doctor who examined the victim was not produced by the Prosecution as a witness. That, the documents of medical examination were thus proved by another Doctor and not by the examining Doctors. That, in view of the grounds put forth the Petitioner has a *prima facie* good case of succeeding in the Appeal and 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.

4. Learned Public Prosecutor objects to the Petition on grounds that in fact the Petitioner by his own averment in the Petition admitted that he has an elder brother who can thus step in and take care of their ailing parents, apart from which the arrest memo indicates that the Petitioner while on Bail had failed to appear when required hence, the conduct of the Petitioner being unreliable ought not to be enlarged on Bail having been convicted of a heinous offence. That in this context, the Supreme Court in ***Preet Pal Singh vs. State of Uttar Pradesh and Another***¹ 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

¹ (2020) 8 SCC 645

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 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.

5. Having heard the Learned Counsel for the parties and considering the other grounds advanced before this Court as elucidated *supra*, we are not inclined to grant the 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
30-10-2024

(Meenakshi Madan Rai)
Judge
30-10-2024

Approved for reporting : **Yes**