

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.02 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) of the
Code of Criminal Procedure, 1973

Appearance

Mr. N. Rai, Senior Advocate with Mr. Yozan Rai, Advocate 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. By filing I.A. No.02 of 2024, an application for
suspension of Sentence and Bail under Section 389(1) of the Code
of Criminal Procedure, 1973 (hereinafter, "Cr.P.C.") the Petitioner
seeks the reliefs thereunder.

2. The Petitioner was convicted of the offence under
Section 376(1) of the Indian Penal Code, 1860 (hereinafter, the
"IPC"), in ST (POCSO) Case No.14 of 2022 (*State of Sikkim vs.
Sandeep Gajmer alias Sandeep Gazmer*), vide the impugned
Judgment dated 21-08-2024 and sentenced to undergo rigorous
imprisonment for a term of ten years under Section 376(1) of the
IPC, vide Order on Sentence dated 22-08-2024, by the Court of
the Learned Special Judge (POCSO Act, 2012), Gangtok, Sikkim.

3. Advancing his arguments for the Petitioner, Learned Senior Counsel submitted that the Petitioner had earlier filed an application under the same provisions as the instant application, however this Court vide its Order dated 30-10-2024, had rejected it, one of the grounds for rejection being that, the Prosecution had submitted that, the arrest memo indicated that the Petitioner had jumped Bail as the relevant column had been "tick marked" to that effect. That, in fact no such record appears before the Learned Trial Court and there was never any attempt by the Petitioner to abscond nor was the Petitioner absent on any date of hearing therein.

(i) That, the family of the Petitioner is suffering on account of his incarceration as he was the only son who was the caregiver and provider for his parents before the Judgment of conviction and consequent Sentence. Both his parents are suffering from various ailments with no one to assist them. His elder brother is living independently with his own family and does not provide care to his parents. His wife is suffering from asthma and anxiety disorder since 2022, while his son is presently attending Class IV in a school, at Ranipool, with no one to take care of him. That, in fact the conviction of the Petitioner by the Learned Trial Court is erroneous unsubstantiated by evidence and he has a *prima facie* good case of success in the Appeal. He is a permanent resident of Samdur, Gangtok, Sikkim and he will not abscond if enlarged on Bail. That, the Learned Trial Court had during the course of the trial enlarged him on Bail and it was only on the pronouncement of the impugned Judgment that he was taken into custody. That, the grounds advanced be considered

sympathetically and justice be meted out to the Petitioner by suspending his sentence and granting him Bail.

4. Learned Additional Public Prosecutor objected to the Petition on grounds that, after his conviction by the Learned Trial Court the case of the Petitioner stands on a different footing, the Prosecution having proved its case beyond reasonable doubt before the Learned Trial Court. That, his parents can be taken care of by his elder brother who forms part of the family. That, the Supreme Court in ***Preet Pal Singh vs. State of Uttar Pradesh and Another***¹ has clearly 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 that of suspension of sentence and post conviction Bail, under Section 389 Cr.P.C., where there cannot be a presumption of innocence. That, the principle of Bail being the rule and jail an exception is not attracted after conviction, once the conviction has been ordered by the Learned Trial Court.

5. Having heard Learned Counsel for the parties at length and having considered the entire gamut of facts and circumstances which led to the conviction of the Petitioner, as pointed out by Learned Additional Public Prosecutor with which submission we are inclined to agree i.e., there is a difference between the grant of Bail prior to trial and grant of Bail and suspension of sentence subsequent to conviction by the Learned Trial Court.

6. Accordingly, at this stage we reject the Petition for Bail.

7. I.A. No.02 of 2024 stands disposed of.

¹ (2020) 8 SCC 645

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

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**