

THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Appellate Jurisdiction)

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

I.A. No.04 of 2025 in CrI.A. No.30 of 2024

Appellant/Petitioner : Sandeep Gajmer @ Sandeep Gazmer
versus

Respondent : State of Sikkim

Application under Section 430(1) of the
Bharatiya Nagarik Suraksha Sanhita, 2023

Appearance

Mr. N. Rai, Senior Advocate (Legal Aid Counsel) with Ms. Tara Devi Chettri, Advocate for the Petitioner/Appellant.

Mr. Thinlay Dorjee Bhutia, Public Prosecutor with Mr. Yadev Sharma, Additional Public Prosecutor for the State-Respondent.

Date of Hearing : 01-12-2025
Order reserved : 01-12-2025
Order pronounced & uploaded : 03-12-2025

ORDER

Meenakshi Madan Rai, J.

1. The Petitioner/Convict seeks suspension of the sentence imposed on him vide the impugned Judgment of conviction, dated 21-08-2024 and Order on Sentence, dated 22-08-2024, of the Court of the Learned Special Judge (POCSO Act, 2012), Gangtok, Sikkim and enlargement on bail.

2. It is submitted by Learned Senior Counsel for the Petitioner that, the Petitioner was convicted under Section 376(1) of the Indian Penal Code, 1860 and sentenced to undergo rigorous imprisonment for a term of ten years and to pay a fine of ₹ 5,000/- (Rupees five thousand) only, with a default stipulation.

3. That, the Petitioner in fact has not committed the offence for which he was convicted and the alleged victim was found in a shed/kiosk in an unconscious state after which the allegation of rape

emerged. She had been missing from her home for more than twenty-four hours, in the said circumstance, the allegation of rape against the Petitioner is erroneous. The medical evidence also failed to substantiate this allegation against him. That apart, he is the only son who is a caregiver to his aged parents who are both sickly, his mother having fractured her shoulder in the month of July, 2024, while his father has metal implants in his hip, thigh and calf after suffering injuries in an accident. Both his parents are therefore unable to fend for themselves. His wife suffers from Asthma and anxiety disorder since the year 2022 and is on medication for the said illnesses. He also has a minor son studying in Class V at Ranipool. Since the Petitioner is the only care giver for his entire family and the only earning member, his family is being subjected to trauma. That, should the Petitioner be enlarged on bail he will be able to assist his family. It was urged that his good conduct be taken into consideration as he was on bail during the entire trial before the Learned Trial Court and did not abscond. He is willing to abide by all terms and conditions imposed by this Court if enlarged on bail.

4. Learned Additional Public Prosecutor objects to the petition for bail on grounds that there is no change in the circumstances of the Petitioner since the last Order of this Court dated 04-12-2024 passed in I.A. No.02 of 2024 in CrI.A. No.30 of 2024 (*Sandeep Gajmer @ Sandeep Gazmer vs. State of Sikkim*) wherein his bail petition along with prayer for suspension of sentence was denied. Relying on the decision in ***Preet Pal Singh vs. State of Uttar Pradesh and Another***¹ the argument advanced was that, the Petitioner has already been convicted for the offence of rape. There is a difference between seeking bail during the course of trial and

¹ (2020) 8 SCC 645

post-conviction bail, as in the latter there can be no presumption of innocence. It was reiterated that the principle of bail being the rule and jail an exception is not attracted after the conviction was ordered by the Trial Court, on appreciation of the evidence before it.

5. We have heard at length the competing submissions advanced by Learned Counsel for the parties. We have also given due consideration to the entirety of the facts and circumstances placed before us by Learned Counsel for the parties.

6. It is to be noticed that there are no changes in the circumstances of the Petitioner/Convict as the grounds raised by him in the instant petition, i.e., I.A. No.04 of 2025 in CrI.A. No.30 of 2024, are the exact same grounds raised in I.A. No.02 of 2024 (*supra*). His mother having suffered an injury in July, 2024 cannot be a ground for enlargement on bail and the ailments of his father and wife are also not grounds for the bail of the Petitioner. Although he claims to be the only breadwinner in his family it is apparent that since his incarceration his household comprising of his parents, wife and minor son, are still functional. It is also to be observed that the prayer for suspension of sentence and enlargement of bail is post the Judgment of conviction and Order on Sentence by the Trial Court which had given due consideration to the evidence placed before it and concluded that he was guilty of the offences of rape.

7. In light of the foregoing discussions, we are not inclined to consider the prayers advanced by Learned Senior Counsel for the Petitioner and consequently reject I.A. No.04 of 2025.

8. I.A. No.04 of 2025 stands disposed of accordingly.

9. We clarify that the observations made hereinabove are only for the purposes of the instant bail petition and shall in no manner be construed as findings on the merits of the Appeal.

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

11. Copy of this Order also be made over to the Petitioner through the Jail Superintendent, Central Prison, Rongyek and to the Jail Authoirty at the Central Prison, Rongyek, for information.

(Bhaskar Raj Pradhan)
Judge
03-12-2025

(Meenakshi Madan Rai)
Judge
03-12-2025

Approved for reporting : **Yes**

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