

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

Dated : 6th December, 2023

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

I.A. No.01 of 2023 in Crl. A. No.33 of 2023

Appellant : Lalit Subba

versus

Respondent : State of Sikkim

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

Appearance

Mr. Sunil Baraily and Mr. Amit Rai, Advocates for the Appellant.

Appellant present in person with Ms. Seema Sherpa, Spouse and infant child Jalsa Subba.

Mr. Yadev Sharma, 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(1) of the Code of Criminal Procedure, 1973 (hereinafter, the "Cr.P.C."), seeking enlargement of the Appellant on bail and for suspension of sentence imposed on the Appellant.

2. It is submitted by Learned Counsel for the Appellant that upon his conviction and sentence vide the impugned Judgment and Order on Sentence both dated 30-09-2023, the Appellant/Convict was on the same date enlarged on bail in terms of Section 389(3) of the Cr.P.C. That, the Appeal before this Court was filed on 22-11-2023, well before completion of the statutory period. That, the instant matter was listed on 29-11-2023 and 30-11-2023 before a Learned Single Bench. Vide Order dated 29-11-2023, the Learned Single Judge ordered *inter alia* that the matter be placed on 30.11.2023 for further consideration of I.A. No.01 of

2023. Vide Order dated 30-11-2023, the Learned Single Judge further granted two days time to the Counsel for the Appellant for the purpose of establishing his case for suspension of sentence and grant of bail. In compliance of the above order, Affidavit dated 01-12-2023 was filed by the Appellant, placing additional documents. That, thereafter this matter has been listed today.

3. Learned Counsel while urging that the Appellant be permitted to remain on bail and continue on the same bail bonds, as per Order dated 30-09-2023 of the Learned Trial Court in Criminal Misc. (Bail) Case No.21 of 2023, put forth the submissions that the minor child of the Appellant (four years old) has been referred to AIIMS, New Delhi, on 20-09-2023, having been diagnosed with *intractable seizure disorder* and advised *epilepsy surgery* for the same. That, the wife of the Appellant is not competent to take the minor child for surgery to New Delhi, as she is illiterate. That, should the child be deprived of medical care, it will have long term repercussions on the quality of her life for no fault of her own. Hence, the Petition be given due consideration.

4. Learned Additional Public Prosecutor *per contra* objected to the submissions put forth by Learned Counsel for the Appellant and urged that this Court consider the nature of the offence perpetrated on a minor by the Appellant. That, in a similar matter pending before this Court, i.e., in I.A. No.01 of 2023 in CrI. A. No.29 of 2023 (*Bed Prakash Adhikari vs. State of Sikkim*) this Court had rejected the Bail Petition. The grounds being similar, the Appellant be treated on an equal footing.

5. I have duly considered the rival submissions advanced before me. I have also perused the records of the case. The Appeal and the I.A. under consideration were filed before this Court

well before the expiry of the statutory period. In view of the facts and circumstances placed before me today and considering that the infant child of the Appellant will have to suffer the consequences of the Appellant not being allowed to continue to remain on bail and as such action would negatively impact her health now and in times to come, as it would tantamount to her deprivation of medical care, I am of the opinion that the Appellant ought to be allowed to continue on the same bail bonds as ordered by the Learned Trial Court on 30-09-2023, in Criminal Misc. (Bail) Case No.21 of 2023, subject to the following conditions;

- (i) *The Appellant shall not leave the Mangan District or the State without the prior permission of the Learned Special Judge (POCSO Act), Mangan District, Sikkim.*
- (ii) *The Appellant shall appear before this Court on all dates fixed for hearing of the Appeal.*
- (iii) *Should the Petitioner fail to report to this Court on the dates fixed, his bail bonds shall stand cancelled and he shall be taken into custody forthwith.*

6. Sentence imposed by the Learned Trial Court against the Petitioner vide the impugned Order on Sentence accordingly stands suspended till further orders.

7. The observations made hereinabove are only for the purposes of the instant I.A. and shall in no manner be construed as findings on the merits of the Appeal.

8. I.A. No.01 of 2023 is allowed and disposed of accordingly.

9. A copy of this Order be forwarded to the Learned Trial Court immediately for information and compliance.

(Meenakshi Madan Rai)

Judge
06-12-2023