

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Jurisdiction)

DATED : 19th January, 2021

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

Bail Appln. No.02 of 2021

Petitioner/Accused : Sanjay Sewa @ Sanju

versus

Respondent : State of Sikkim

Application under Section 439
of the Code of Criminal Procedure, 1973

Appearance:

Mr. B.K. Gupta, Advocate for the Petitioner/Accused.

Mr. Hissey Gyaltsen, Assistant Public Prosecutor for the State-Respondent.

O R D E R (ORAL)

Meenakshi Madan Rai, J.

1. The Petitioner herein, a 26 (twenty-six) year old male, was arrested on 24.08.2020, in connection with Singtam Police Station Case (FIR) No.40 of 2020, of the same date, under Section 6 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act"). By filing this Bail Petition, he seeks release from judicial custody.

2. Learned Counsel for the Petitioner submits that the Petitioner had earlier filed a Bail Petition (Criminal Misc. Case (POCSO) Bail No.23 of 2020) before the Court of the Learned Special Judge, POCSO Act, 2012, East Sikkim at

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Gangtok, which was rejected on 07.09.2020. Thereafter, on filing of Charge-Sheet, another Bail Petition (Criminal Misc. Case (POCSO) Bail No.38 of 2020) was filed, which was also rejected on 27.11.2020. That, the Petitioner has not committed the offence which he is accused of, this submission is buttressed by the Medical Report of the victim which shows no injuries on the genital of the victim. That, the Petitioner has been falsely implicated in the instant matter on account of animosity between him and the victim's mother who is his maternal aunt. That, although no averments have been made in the Bail Petition, however, the Petitioner was, in fact, employed as an Assistant Lecturer at ATTC, Bardang, East Sikkim, having no criminal antecedents and belongs to a good family. That, should the Petitioner be enlarged on bail, he is willing to abide by any terms and conditions imposed by this Court, besides which, he undertakes to reside in Singtam, East Sikkim away from where the victim resides i.e. Bardang, East Sikkim, which is, in fact, his permanent home. That, due to the number of jail inmates in State Central Jail, Rongyek, testing positive for COVID-19, he is also at risk of contracting the virus. That, considering that there is no *prima facie* evidence on record against him, he may be enlarged on bail.

3. *Per contra*, while repelling the arguments of the Petitioner, Learned Assistant Public Prosecutor submitted that the Petitioner is a grown man of 26 (twenty-six) years,

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while the victim is a 3 (three) year old child who was unaware of the intent of the act foisted on her by the Petitioner. That, the offence committed is serious and ought to be considered so by this Court. That, considering the gravity of the offence and the penalty thereof, there is every likelihood that he will abscond, should this Court enlarge him on bail. Hence, the Petition deserves a dismissal.

4. Due consideration has been given to the rival submissions of Learned Counsel for the parties and all documents perused.

5. The submission of Learned Counsel for the parties as well as the records reveal that the victim is a mere child of approximately 3 (three) years and the allegation against the Petitioner is serious, considering that it was committed on a child so young. The penal provision is also duly taken into consideration by this Court. In the facts and circumstances placed before me and in view of the gravity of the offence and the penalty it entails, which may prompt the Petitioner to abscond if enlarged on bail, I am not inclined to allow the Petition. However, all efforts shall be made by the Learned Trial Court to dispose of the matter by the end of May, 2021.

6. The observations made hereinabove are only for the purposes of the instant Bail Petition and shall not be construed as a finding on the merits of the matter which shall be considered at the time of trial.

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- 7.** The Bail Appln. stands rejected and disposed of.
- 8.** Copy of this Order be sent to the Learned Trial Court, for information and compliance.

(Meenakshi Madan Rai)
Judge

19.01.2021