



Bail Application No 03 of 2021
Karma Sherpa v. State of Sikkim

THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

Bail Application No.03 of 2021

Karma Sherpa,
S/o Shri Phurba Sherpa,
Permanent resident of:
Lower Samdong, East Sikkim.

At present:
Under Judicial Custody
State Jail, Rongyek

..... Applicant

Versus

State of Sikkim

.....Respondent

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

Appearance:

Ms. Zola Megi, Advocate for the applicant.

Mr. Yadev Sharma, Additional Public Prosecutor and Ms.
Pema Bhutia, Assistant Public Prosecutor for the State of
Sikkim.

Date of hearing : 05.02.2021

ORDER (O R A L)

Bhaskar Raj Pradhan, J.

1. This is an application under Section 439 of the Code of Criminal Procedure, 1973 (Cr.P.C.) seeking bail for the applicant who is under trial. The First Information Report



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(FIR) was lodged against him on 15.05.2019. On the same date he was arrested and since then he has been incarcerated. He is presently lodged at Rongyek, Jail, East Sikkim. According to the applicant he is 22 years old and the charge against him is that he has committed sexual assault on a 15 year old victim. The investigation completed, the prosecution filed a charge sheet on 30.07.2019. On 21.09.2019, it has been informed, charges under section 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act, 2012) as well as under Section 354 of the Indian Penal Code, 1860 (IPC) were framed against the applicant. The trial has progressed and as of now 7 witnesses have been examined. 7 more witnesses are yet to be examined. The last date scheduled by the learned Special Judge for examination of the prosecution witnesses is 17.05.2021.

2. The records reveal that the learned Sessions Judge had rejected the applicant's application for bail on 30.05.2019 on the ground *inter-alia* that the investigation was in progress. The second bail application was rejected on 25.08.2020 on the ground that victim had deposed about the sexual assault and therefore, it was not the case of being incarcerated without any basis. Further, it was



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also held that the offences were of serious nature, trial was under progress, some of the witnesses are yet to be examined and given the nature of the case the possibility of the applicant trying to abuse his liberty cannot be ruled out. In so far as the applicant's medical condition is concerned it was observed that the jail authorities had extended the required medical facilities to the applicant in jail.

3. Ms. Zola Megi, learned counsel for the applicant urges this bail application once again on the applicant's medical condition and on the ground that the trial now being substantially over, the main witnesses have been examined and secured. It is also urged that the applicant had just completed school, aged about 22 years only and as such he is neither in a position to influence the witnesses or tamper with evidence. It is urged that the applicant has no past criminal record.

4. Mr. Yadev Sharma, learned Additional Public Prosecutor while opposing the bail on the ground that offences charged are of serious nature and he may misuse his liberty also fairly concedes that even in the charge-



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sheet the investigating officer has categorically noted that the applicant does not have any criminal record.

5. It is seen that the victim, her mother as well as several other important witnesses have been examined and their depositions secured.

6. Considered the application for bail, the objections filed by the State dated 02.02.2021 as well as the additional documents placed on record on 02.02.2021 by the applicant.

7. At this stage of trial the primary concern for the court should be the uninterrupted progress for fair trial to ensure justice is done. This can happen only when prosecution witnesses are able to depose freely, without fear or favour. The court must also be conscious that the applicant is only an under trial and his liberty is a relevant consideration. While adopting a liberal approach the possibility of interdicting fair trial if released on bail should be obliterated.

8. Considering the nature of the offence and the fact that the applicant has already spend 1 year and 8 months in jail out of the minimum sentence of 5 years prescribed for the offence under Section 10 of the POCSO Act, 2012, it may



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not be proper to continue him in jail any further. More so when besides the statement that the applicant is likely to abuse the liberty if granted, there is no reason or rationale to the allegation made.

9. The applicant seems to be a patient of congenital heart disease and had been treated previously in the Central Referral Hospital, Tadong. The applicant has urged that because of his medical condition, the ongoing COVID-19 situation and the increase in the number of infections amongst the under trial prisoners at Rongyek Jail he is at high risk of contracting the virus which may prove fatal to him. The State in its response has urged that at present there is no active COVID-19 patient at Rongyek Jail. The medical condition of the applicant is not disputed. The fact that at present there is no COVID-19 patients at Rongyek Jail does not permit an inference that it is likely never to happen considering the fact that admittedly a large number of under trial prisoners at the Rongyek Jail had been infected with COVID-19 recently. Keeping in mind all the above circumstances this court deems it fit and proper to grant bail to the applicant on his furnishing security to the satisfaction of the learned Special Judge, POCSO Act, East Sikkim on the following conditions:-



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- (i) The applicant shall not leave the jurisdiction of the Singtam police station without the written permission of the investigating officer.
- (ii) He shall report to the Station House Officer (SHO) of the Singtam police station every Monday at 10.30 a.m. If the date fixed by the learned Special Judge for the trial of the case falls on a Monday he shall report on the next working day at the same time on which day he is not required for the trial.
- (iii) He shall stay away from the victim, her family and friends and the prosecution witnesses during the period of trial and not attempt to influence them or even contact them, directly or indirectly.
- (iv) He shall appear before the learned Special Judge, POCSO East Sikkim on every date fixed for trial.

10. The application for bail is allowed and accordingly disposed of.

**(Bhaskar Raj Pradhan)
Judge**

Approved for reporting : **Yes**
Internet : **Yes**

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