

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Jurisdiction)

DATED : 10th DECEMBER, 2020

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

Bail Appln. No.13 of 2020

Petitioner : Anthony Rai

versus

Respondent : State of Sikkim

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

Appearance

Ms. Kriti Pradhan and Ms. Binu Rai, Advocates for the Petitioner.

Mr. Yadev Sharma, Additional Public Prosecutor for the State-
Respondent.

ORDER (ORAL)

Meenakshi Madan Rai, J.

1. The instant application has been filed by the Petitioner under Section 439 of the Code of Criminal Procedure, 1973 (for short, Cr.P.C.) seeking enlargement on bail. The Petitioner, aged about 23 years was arrested in connection with the Sadar P.S. FIR No.112/2020, dated, 10-07-2020, under Section 376 of the Indian Penal Code, 1860 (for short, "IPC"), read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short, "POCSO Act, 2012").

2. Learned Counsel for the Petitioner submits that the Petitioner has been falsely implicated in the instant matter for allegedly committing the offence under Section 376 of the IPC read with Section 4 of the POCSO Act, 2012, on the victim alleged

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to be about 16 years old. That, in fact, although it has not been averred in the Petition inadvertently, however the accused and the victim were friends and the victim had of her own free will gone to the house of the accused where the offence is alleged to have been committed but is not supported by the medical evidence which in fact reveals lack of injuries on the person of the victim and on her genitals as well. That, the Section 161 Cr.P.C. statement and Section 164 Cr.P.C. statements of the victim differ from each other rendering the Prosecution case suspect. It is urged that the Petitioner is a taxi driver and plies a taxi for his livelihood on which his family comprising amongst others of aged and ailing parents are dependent as he is the only breadwinner. That, due to the false allegation resulting in his incarceration his parents are suffering. The Petitioner undertakes not to tamper with evidence or to abscond if enlarged on bail and is willing to abide by any conditions imposed by this Court should this Court be so inclined to grant Bail . That, in the facts and circumstances of the case, the Petitioner may be set at liberty.

3. Objecting to the prayers for bail, Learned Additional Public Prosecutor submits that the victim is 16 years of age having been born on 13-12-2004, as per the Birth Certificate seized by the Investigating Officer (I.O.) of the case. That, the offence is a heinous offence committed on a minor by a 23 year old adult. That, the Charge-Sheet has already been filed and trial is yet to commence. Should the accused be enlarged on bail at this stage in all likelihood he will influence the victim and other Prosecution witnesses and thereby set to naught the

Prosecution case, hence the Petition for Bail deserves to be rejected.

4. I have heard Learned Counsel for the parties *in extenso* and given due consideration to their submissions. I have also perused the documents on record, viz., Section 161 Cr.P.C. statement, Section 164 Cr.P.C. statement and the medical report of the victim.

5. The alleged incident occurred on 09-07-2020 and the medical report of the victim is dated 10-07-2020. The medical Report *prima facie* reveals no visible injuries either on the person of the victim or on her private parts. The vaginal wash sample was admittedly also collected and Learned Additional Public Prosecutor concedes that the vaginal wash tested negative for any spermatozoa.

6. In view of all the facts and circumstances placed before me, I am of the considered opinion that this is a fit case where the Petitioner can be released on bail subject to the imposition of certain conditions.

7. It is hereby ordered that the Petitioner be enlarged on bail on furnishing PB&SB of Rs.50,000/- (Rupees fifty thousand) only, each, subject to the conditions that;

(i) *He shall not leave Sikkim without the specific written permission of the I.O. of the case;*

(ii) *He shall not be in contact either with the victim or any of the other Prosecution witnesses;*

(iii) *He shall not threaten either the victim or any of the other witnesses acquainted with the facts of the case; and*

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(iv) He shall appear before the Learned Trial Court on every date fixed for trial.

Should any of the above conditions be violated his bail bonds shall stand cancelled and he shall be taken into judicial custody forthwith.

8. The observations made herein above are only for the purposes of this Bail Application and shall in no manner be construed as opinions on the merits of the matter.

9. Bail application stands disposed of accordingly.

10. Copy of this Order be sent to the Learned Trial Court for information.

(Meenakshi Madan Rai)
Judge

10-12-2020