
(2024) 12 SIK CK 0004

Sikkim High Court

Case No: I.A. No. 01 Of 2024 In Criminal Appeal No. 25 Of 2024

Jeet Hang Subba

APPELLANT

Vs

State Of Sikkim

RESPONDENT

Date of Decision: Dec. 4, 2024

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 389(1)
- Indian Penal Code, 1860 - Section 376(1)
- Protection Of Children From Sexual Offences Act, 2012 - Section 3(a), 4(1)

Hon'ble Judges: Meenakshi Madan Rai, J; Bhaskar Raj Pradhan, J

Bench: Division Bench

Advocate: Jorgay Namka, Mingma Lhamu Sherpa, Yadev Sharma, Sujan Sunwar

Final Decision: Dismissed

Judgement

Meenakshi Madan Rai, J

1. I.A. No.01 of 2024 is an application under Section 389(1) of the Code of Criminal Procedure, 1973 (hereinafter, "Cr.P.C.") seeking Bail and

suspension of Sentence for the Petitioner/Appellant.

2. Learned Additional Public Prosecutor has filed written objection to the Bail application.

3. The Petitioner, then aged about twenty-seven years was convicted by the Court of the Learned Special Judge (POCSO Act, 2012), Soreng, Sikkim,

vide its impugned Judgment dated 31-07-2024, in ST (POCSO) Case No.01 of 2024 S(tate of Sikkim vs. Jeet Hang Subba) under Section 376(1) of

the Indian Penal Code, 1860 (hereinafter, the "IPC") and Section 3(a) punishable under Section 4(1) of the Protection of Children from Sexual

Offences Act, 2012 (hereinafter, the "POCSO Act"). He was sentenced to undergo simple imprisonment for a term of ten years and to pay fine

of ₹ 5,000/- (Rupees five thousand) only, for the offence under Section 376(1) of the IPC and simple imprisonment for a term of ten years and fine of

₹ 5,000/- (Rupees five thousand) only, under Section 3(a) of the POCSO Act, with default stipulations.

4. Before this Court, it is urged by Learned Senior Counsel for the Petitioner that the Petitioner is a young man aged about twenty-seven years, who is

married, has a baby aged about eighteen months and elderly parents all of whom were completely dependent on the Petitioner. That, in fact the

conviction of the Petitioner is erroneous for the reason that, the DNA paternity test failed to determine that the Petitioner was the biological father of

the alleged foetus. The Petitioner was thus wrongly foisted with the offence. In fact, admittedly the result being negative, the Expert was not even

sought to be examined by the Prosecution before the Learned Trial Court. The age of the victim also remained unproved as there was vacillating

evidence of the victim, her sisters and her parents pertaining to her age. That, the victim in her evidence has admitted that the sexual act between

herself and the Petitioner was consensual and the question of convicting the Petitioner for the offence of rape therefore does not arise. That,

considering the entire facts and circumstances, the Petitioner has a prima facie good case on merits and in such circumstances the application be

given due consideration and his sentence suspended and the Petitioner be enlarged on Bail. That, he is a permanent resident of Sikkim with his home

and hearth here and a family who is dependent on him, consequently there is no likelihood of him absconding.

5. Objecting to the prayers, it was contended by Learned Additional Public Prosecutor that the Petition for Bail deserves no consideration as the age

of the victim has been established by the Prosecution and the Learned Trial Court on appreciating the evidence on record concluded that the victim

was indeed a minor. That, in such circumstances releasing the Petitioner on Bail would be travesty of justice since all material facts and

circumstances have been considered by the Learned Trial Court and the Judgment of conviction handed out. Fortifying his submissions with the

decision of the Supreme Court in Preet Pal Singh vs. State of Uttar Pradesh and Another (2020) 8 SCC 645, Learned Additional Public Prosecutor

submitted that the prayer for Bail, post conviction, stands on a different footing than one made prior to or pre-trial, as in that circumstance the

Prosecution case has not been proved beyond reasonable doubt. In a case of conviction, as in the instant one, all materials pointing to the guilt of the

Petitioner are considered and hence stands on a different footing. The application thereby deserves a dismissal.

6. We have given due consideration to the gamut of facts and circumstances placed before us and heard the matter at length and in detail. In view of

the same, we are disinclined to consider enlarging the Petitioner on Bail.

7. I.A. No.01 of 2024 accordingly stands rejected and disposed of.

8. The observations made hereinabove are not to be construed as findings on the merits of the Appeal.

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

10. Copy of this Order also be made over to the Petitioner through the Jail Superintendent, Central Prison, Rongyek and to the Jail Authority at the

Central Prison, Rongyek, for information.