

IN THE HIGH COURT OF SIKKIM

CRIMINAL JURISDICTION

BAIL APPLN No.08.....of 20..12

PRADIP GUPTA

APPLICANT/

~~Appellants (s)~~
Petitioner (s)

Versus

STATE OF SIKKIM

Respondent (s)
~~Opposite party (s)~~

~~-Appellant-~~

For APPLICANT /
Petitioner
(Advocate (s))

MR. T.G.BHUTIA, MR. DURGA PD. LUITEL AND
MR. SONAM BHUTIA

Respondent

For Opposite Party
(Advocate (s))

MR. J. B. PRADHAN, PUBLIC PROSECUTOR WITH
MR. KARMA THINLAY, ADDL. PUBLIC PROSECUTOR
AND MR. S. K. CHETTRI, ASSTT. PUBLIC PROSECUTOR


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01.	11.12.2012	<p style="text-align: center;">BEFORE</p> <p style="text-align: center;">HON'BLE MR. JUSTICE S. P. WANGDI, ACTING CHIEF JUSTICE</p> <p>Present: Mr. T. G. Bhutia, Advocate for the Applicant.</p> <p>Mr. Karma Thinlay Namgyal, Additional Public Prosecutor and Mr. S. K. Chettri, Assistant Public Prosecutor for the State.</p> <p>SI Bijendra Thapa, Investigating Officer, in person.</p> <p style="text-align: center;">-----</p> <p>The Applicant was arrested by the Singtam Police on 02-10-2012 for alleged offence under Section 304B of the Indian Penal Code. He remained in Police custody till</p>


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1	2	<p>09-10-2012 and thereafter has been in judicial custody. The Applicant was charged with the offence under suspicion that he was responsible for his wife having done herself to death being harassed due to his demand for dowry.</p> <p>Mr. Tempo Gyatso, Learned Counsel appearing on behalf of the Applicant, submits that the Applicant had applied for bail before the Learned Sessions Judge, East and North Sikkim at Gangtok, three times, i.e., in Criminal Misc. Case Nos.23 of 2012, 24 of 2012 and 25 of 2012 respectively, but all those were rejected primarily on the ground that the offence charged against the Application is a grave one and that there was reasonable apprehension that the Applicant may tamper with the evidence. The Learned Counsel submits that no materials were produced by the prosecution before the Learned Sessions Judge in support of those grounds except for the use of the vague terminology like tampering with the evidence. Relying upon the decision of Sanjay Chandra vs. Central Bureau of Investigation : (2012) 1 SCC 40 it is his submission that the objection raised on behalf of the prosecution that the offence charged against the Application is a grave one cannot be a ground for rejecting the Bail Application as it would tantamount to pre-trial punishment. The Learned Counsel further submits that there is no impediment for this Court to consider the Application even on the admitted position that Bail Applications filed before the Court of the Learned Sessions Judge had been rejected earlier. As per him no <i>prima facie</i> case had been made out against the Applicant to sustain the charge against him. Even otherwise, considering his past conduct in rendering full cooperation to the Investigating Agency in the investigation of the case, the Applicant deserves to be set at liberty on such conditions that may be</p>


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		<p>deemed appropriate. He further submits that the Applicant shall not abscond and flee from investigation and the trial and that he shall not cause any impediment or obstruction in the fair investigation of the case.</p> <p>Mr. Karma Thinlay Namgyal, Learned Additional Public Prosecutor, objects to the Application primarily on two grounds. Firstly, it is submitted that some more witnesses are required to be examined and secondly, call records pertaining to the mobile phone of the deceased is yet to be obtained in order to complete the investigation. He submits that the Bail Application deserves to be dismissed as it amounts to filing repetitive Bail Applications taking into consideration the fact that on the very grounds raised in the present Application the earlier ones were rejected by the Learned Sessions Judge. The Learned Additional Public Prosecutor sought to rely upon the decision of Jamiruddin Ansari vs. Central Bureau of Investigation and Another : (2009) 6 SCC 316 in this regard, more particularly paragraphs 2 and 71, the relevant portions of which are reproduced below:-</p> <p style="padding-left: 40px;">"2. SLP (Crl.) No. 5677 of 2007 has been filed by Jamiruddin Ansari, challenging the order passed by the Bombay High Court on 16-04-2007, rejecting his prayer for bail, although he is in custody since his arrest on 10-10-2004 without trial.</p> <p style="text-align: center;">.....</p> <p style="padding-left: 40px;">71. Except for the fact that the appellant has undergone a further period in custody, there is really no change in the circumstances under which his initial bail application was rejected. We, therefore, see no reason to entertain the appeal filed by him and the same is dismissed."</p> <p>The Learned Additional Public Prosecutor also referred to the decision of State of T.N. vs. S. A. Raja : (2005) 8 SCC 380 and relied upon the following paragraph:</p>




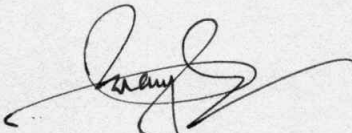
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		<p style="text-align: center;">"9. When a learned Single Judge of the same Court had denied bail to the respondent for certain reasons and that order was unsuccessfully challenged before the appellate forum without there being any major change of circumstances, another fresh application should not have been dealt with within a short span of time unless there were valid grounds giving rise to a tenable case for bail. Of course, the principles of <i>res judicata</i> are not applicable to bail applications, but the repeated filing of the bail applications without there being any change of circumstances would lead to bad precedents."</p> <p>It is his submission that if the Applicant is set at liberty at this stage there is every possibility of him tampering with the evidence thereby causing prejudice to the Investigating Agency.</p> <p>The Learned Counsel for the Applicant in his rebuttal sought reliance upon the decision of a Single Bench of Madhya Pradesh High Court reported in 2000 (1) RCR (Criminal) 399 in the matter of Mohan Raikwar vs. State of M.P. and urged that there was no bar under the law to apply for bail more than once and that an application for bail cannot be rejected solely on that ground but requires consideration in the light of fresh circumstances and subsequent events that may emerge. He emphasized on the observation of the Court that "The changed circumstances do not mean extra-ordinary circumstances. Each day's confinement, each day's delay and each day's detention of the petitioner should be taken as a relevant consideration while considering the second application."</p> <p>I have heard the Learned Counsels and considered the rival submissions made on behalf of the respective parties. I have also gone through the Case Diary produced by the Investigating Officer who is also present in Court. The Application filed before this Court is under Section 439 of the</p>

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		<p>Code of Criminal Procedure which prescribes the parameters and the scope within which a Court requires to act. On a plain reading of Section 439 Cr.P.C. read with Section 437 it is quite evident that the approach of the Courts ought to be to grant and not to reject a bail. For convenience, we may reproduce Section 437(1) and the fourth proviso which is relevant for the purpose at hand.</p> <p>"437. When bail may be taken in case of non-bailable offence.—(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High court or Court of Session, he may be released on bail, but—</p> <ul style="list-style-type: none"> (i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life; (ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of more, or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but not less than seven years: <p>.....</p> <p>Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this subsection without giving an opportunity of hearing to the Public Prosecutor."</p>

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		<p>As would be evident from the above, Section 437 contemplates that when any accused person suspected of the commission of any non-bailable offence is arrested or detained without warrant he may be released on bail subject to the conditions provided therein. The fourth proviso no doubt creates an embargo upon the Court to grant bail to persons suspected of having committed offences which are punishable with death, imprisonment for life or imprisonment for seven years or more without giving an opportunity of hearing to the Public Prosecutor. Yet, it does not in any manner debar it from granting bail, the only condition being that an opportunity of hearing ought to be given to the Public Prosecutor. A wide discretion has been vested upon the Courts in such matters and the law laid down by the Hon'ble Supreme Court in a catena of its decisions is that the approach ought to be in favour of granting bail except in circumstances that may be compelling and extra-ordinary.</p> <p>In the present case, upon examination of the case records, the evidence collected thus far against the Application appears to be quite sketchy rather than being convincing for this Court to arrive at a conclusion that a <i>prima facie</i> case exists against Applicant. The evidence of the father-in-law, Mr. Krishna Prasad Kalwar, of the Applicant and acquaintance of the father-in-law, namely, Santosh Kumar Gupta, sketchy as they are, sought to be relied upon heavily on behalf of the prosecution do not appear to be such as to inspire confidence to be accepted as reliable evidence appearing against the Applicant.</p> <p>This is so far as the the merits of the case <i>prima facie</i> is concerned. Even the ground raised by the Learned Additional Public Prosecutor that the call records of the</p>

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		<p>mobile phone of the deceased is still awaited also, in my view, does not deserve consideration as we find from the entry in the Case Diary dated 26-09-2012 that the very same position existed as on that date. No doubt, as per the Learned Additional Public Prosecutor, the call details in respect of the mobile phone of the Applicant has since been received, but it is not understood as to why such details in respect of the deceased has still not been obtained. Of course, it is submitted by the Learned Additional Public Prosecutor that considerable period had been required for completion of the process at various stages in the Police Administration and the Service Provider but, this does not explain the delay in obtaining the call details of the mobile phone of the deceased when it was possible for that of the Applicant. Even otherwise, this cannot be a ground for rejection of bail as the confining of the Applicant would not be necessary for such purpose. The ground, therefore, not being convincing stands rejected.</p> <p>The other point raised by the Learned Additional Public Prosecutor as regards the non-existence of change in the circumstances from the position when the last Bail Application was rejected, in my view, also cannot be sustained. This is a proceeding under Section 439 Cr.P.C. vesting special powers upon this Court and the Sessions Court regarding bail and, admittedly at the stage of investigation, unlike the facts obtaining in the cases referred to by the Learned Additional Public Prosecutor. No progress also appears to have been made in the investigation of the case since the stage when the Bail Application before the Learned Sessions Judge was rejected. This is not withstanding earlier observation that the evidence collected against the Applicant appears to be sketchy and not at all</p>

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		<p>convincing to constitute a <i>prima facie</i> case against him. Under such circumstances it would be unfair and a travesty of justice to confine the Applicant further in custody any longer. Doing so would tantamount to pre-trial punishment. The offence charged against the Applicant is a grave one but that itself would not justify in curtailing his liberty.</p> <p>In view of the above, the application is allowed and the Applicant is enlarged on bail subject to the following terms and conditions:-</p> <ul style="list-style-type: none"> (i) The Applicant shall report to the Investigating Officer twice in a week on such dates as the Investigating Officer may direct; (ii) The Applicant shall not in any manner make attempts to contact his in-laws or any other person or persons in the neighbourhood acquainted with the facts and circumstances of the case or tamper with the evidence until completion of the investigation and submission of the charge-sheet, if any; (iii) The Applicant shall not leave Sikkim without the permission of the Learned Sessions Judge, East and North Sikkim at Gangtok; (iv) The Applicant shall furnish personal bond of 50,000/- and a reliable security to the like amount; and (v) The Applicant shall render all assistance to and cooperation with the Investigating Officer in the investigation of the case.

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		<p>With the above observations, the Bail Application stands disposed of.</p> <p>However, before parting, it is made clear that observations contained in this Order shall not be construed as expressions or opinion on the merits of the case.</p> <p>A copy of this Order be transmitted forthwith to the Court of the Learned Sessions Judge, East and North Sikkim at Gangtok.</p> <p style="text-align: center;"> Acting Chief Justice 11-12-2012</p> <p>Index : Yes/No Internet : Yes/No</p>

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