

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Jurisdiction)

DATED : 8th JULY, 2020

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

Bail Appln. No.08 of 2020

Petitioner/Accused : Pempa Rapgay Bhutia

versus

Respondent : State of Sikkim

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

Appearance

Mr. Jorgay Namka, Advocate for the Petitioner/Accused Person.

Mr. S. K. Chettri, Additional Public Prosecutor for the Respondent.

O R D E R

Meenakshi Madan Rai, J.

1. The Petitioner herein has been booked under Section 10 of the Protection of Children from Sexual Offences Act, 2012, for having committed sexual assault on a minor victim, aged about 11 years. Learned Counsel for the Petitioner submits that the allegation against the Petitioner is false as the objective of the victim herein and two other minor girls, aged about 13 years and 15 years, all housed in the Drishya Child Care Centre, Aho, East Sikkim, was to run away from the Centre. In pursuance thereof, the victim and the two other girls falsely informed their teacher that they had been molested at the Centre by the Petitioner. The teacher reported the incident to the Ranipool Police Station. Following such report, all three girls were counselled by a Counsellor from the Child

Welfare Centre. During the counselling, the other two girls admitted that their allegations against the Petitioner were false. That, the instant FIR has lodged on 27-02-2020 by two Members of the Child Welfare Committee alleging assault on the 11 year old minor victim by the Petitioner. Learned Counsel further canvassed the contention, that, on 28-02-2020 when the alleged victim was taken to the place of occurrence by the Investigating Officer accompanied by three Child Line staff under the Child Welfare Committee, she specifically stated that the allegations made by her against the petitioner was untrue. The allegation is evidently false as the Petitioner is not even the In-Charge of the Centre, where the alleged victim is housed, but is the In-Charge of Drishya Rehabilitation Centre and lends a helping hand to the Drishya Child Care Centre in managing its accounts. On the basis of the FIR, the Petitioner was arrested on the same date from where he was remanded to judicial custody and has been in custody for 132 days. That, the Petitioner is innocent and his detention in custody will tantamount to punishment before conviction and thereby in violation of his fundamental rights. Besides, he is the only earning member in his family comprising of two aged parents who are Senior Citizens and require his constant attention. His incarceration would therefore prejudice his parents. To fortify his submissions, Learned Counsel placed reliance on **Neeru Yadav vs. State of Uttar Pradesh**¹ and **Nikesh Tarachand Shah vs. Union of India**². It was urged that the offence allegedly

¹ AIR 2015 SC 3703

² 2018 CRILJ. 721 (SC)

committed by the Petitioner entails imprisonment of a maximum of seven years and not with death or imprisonment with life. That should the Petitioner be enlarged on bail he undertakes not to tamper with evidence which in any event is not possible since the children are now lodged in the Freedom Open Shelter Home, Tathangchen, which is being run by a Non-Governmental Organisation to which the Petitioner has no access. That, on similar grounds the question of threatening the victim or influencing the other witnesses does not arise. Learned Counsel also submits that the Petitioner has no criminal antecedents and he will not abscond since he is a permanent resident of Sikkim. That, if he is enlarged on bail he is willing to abide by any stringent conditions imposed by this Court.

2. Learned Additional Public Prosecutor *per contra* submitted that the offence committed on the minor victim is a heinous. That, contrary to the submission of Learned Counsel for the Petitioner that the victim had stated at the place of occurrence, on 28-02-2020, that she had made a false allegation against the Petitioner, the investigation reveals no such circumstance and infact the Charge-Sheet clearly reveals that it was only the other two alleged victims who denied having been sexually assaulted by the Petitioner, while the minor victim consistently reiterated that she was infact sexually assaulted by the Petitioner not on one, but infact on three different occasions. That, there is every likelihood of the Petitioner tampering and threatening witnesses inasmuch as

even if he is not in a position to threaten the victim directly the parents of the victim may be subjected to such ordeal as also other witnesses. That, the gravity of the offence and the penalty may also be considered by this Court. That, the Charge-Sheet has already been submitted and trial is to commence shortly, in such a circumstance, enlarging the Petitioner on bail at this stage would seriously prejudice the Prosecution case. That, in consideration of all the grounds put forth the Petition be rejected.

3. I have heard at length the rival submissions of Learned Counsel and carefully perused all documents placed before me.

4. From the records and admittedly the Petitioner is aged about 38 years, while the minor victim is aged about 11 years. The victim has alleged sexual assault by the Petitioner on three separate occasions in the Drishya Shelter Home where she was lodged and the Petitioner was the In-Charge. Although the specific argument forwarded by Learned Counsel for the Petitioner was that the Petitioner was not the In-Charge of the Drishya Child Care Centre, investigation indicates otherwise. He was working as an Accountant in the Drishya Rehabilitation Centre, but was the In-Charge of the Drishya Child Care Centre since 2018. Vehement arguments were made on the point that the victim had also stated that she had lied about the allegation against the Petitioner, but the Prosecution case is to the effect that the other two children had admitted this position but not

the victim. This Court is aware of the principles laid down in the ratio of the Hon'ble Supreme Court in **Ram Govind Upadhyay vs. Sudarshan Singh and Others**³ relied on by Learned Counsel while considering an application for bail. At the same time it is worth noticing that the Court is also required to consider not only the gravity of the offence, but the interest of the society at large. In **Prasanta Kumar Sarkar vs. Ashis Chatterjee and Another**⁴ the points factored in by the Hon'ble Supreme Court at the time of considering bail application is the necessity of examining whether there is any *prima facie* case or reasonable ground to believe that the accused had committed the offence and the likelihood of its repetition as also reasonable apprehension of the witnesses being influenced.

5. The Petitioner has been booked under the stringent provisions of the Protection of Children from Sexual Offences Act, 2012, and it is trite to reiterate that the victim is 11 years old, while the Petitioner is 38 years old. In such a circumstance, the nature and gravity of the accusation, the penalty for which extends to seven years, cannot be overlooked. Consequently, the likelihood of absconsion of the Petitioner or his tampering with and influencing witnesses cannot be ruled out. At the same time, the interest of the society at large is also to be given due consideration which could be jeopardised by enlarging the Petitioner, who has at this stage been accused of sexual assault against a minor child.

³ (2002) 3 SCC 598

⁴ (2010) 14 SCC 525

6. Hence, in the light of the facts, circumstances and materials placed before this Court at this juncture and in view of the *prima facie* satisfaction of this Court concerning the offence based on such materials, I am of the considered opinion that the instant matter is not one where the discretion of this Court can be exercised in favour of the Petitioner.

7. Consequently, the Bail Appln. stands rejected and disposed of.

(Meenakshi Madan Rai)
Judge
08-07-2020

Approved for reporting : **Yes**