

**IN THE HIGH COURT OF SIKKIM
CRIMINAL JURISDICTION**

Bail Appl. No. 01 OF 2016

Monil Kumar Sharma @ M. K. Sharma,
S/o Shri A. C. Mehrish,
By occupation employee of
M/s Jal Power Corporation Pvt. Ltd.,
R/o 45/GF Block – 3 E.R.O.S. Garden,
Faridabad,
Pin No. 121 009. ----- Petitioner.

-VERSUS-

State of Sikkim,
Through: The Ld. Public Prosecutor,
High Court of Sikkim. ----- Respondent.

PETITIONER
ADVOCATE (S)
FOR ----- Mr. Zangpo Sherpa, Mr. Dewen Sharma Luitel,
Mr. Bhupendra Giri and Mr. Kumar Sharma.

RESPONDENT
ADVOCATE (S)
FOR ----- J. B. Pradhan, Public Prosecutor, Mr. Karma
Thinlay, Addl. Public Prosecutor, Mr. S. K. Chettri,
Asstt. Public Prosecutor and Ms. Pollin Rai, Asstt.
Public Prosecutor.

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01.	29-02-2016	<u>Bail Appln. No.01 of 2016</u> Monil Kumar Sharma @ M. K. Sharma vs. State of Sikkim <u>BEFORE</u> HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE Present : Mr. Zangpo Bhutia and Mr. Jushan Lepcha, Advocates for the Applicant. Mr. Karma Thinlay Namgyal, Additional Public Prosecutor with Mr. S. K. Chettri and Mrs. Pollin Rai, Assistant Public Prosecutors for the State- Respondent. ----- (1) This Application has been filed under Section 438 of the Cr. P.C., 1973 by the Petitioner, apprehending arrest in connection with F.I.R. No. 06/2016 dated 13.01.2016 filed at Jorethang Police Station under Sections 406/409 of the Indian Penal Code, 1860. (2) It is the Petitioner's case that he is the Managing Director of M/s Jal Power Corporation Limited, having its Corporate Office at Noida, Uttar Pradesh and its Site Office at Jorethang, South Sikkim. (3) That, on 12.01.2016, the Inspector of the Sub Regional Office, Provident Fund, Siliguri, visited the Site Office and on inspection, it was found that the Employees and Employer's contribution to the Provident Fund had been stalled from November, 2013, on account of non-availability of funds due to the Project also being stalled, which continued till December, 2015. (4) Due to the said facts and circumstances, the funds were used for meeting the salaries of the employees and other

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		necessary liabilities and responsibilities, towards which till date no complaint had been lodged by the employees. (5) The Inspector <i>supra</i> instead of exhausting the remedies under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 for resolving the issue, resorted to lodging an F.I.R. on 13.01.2016 before the Jorethang Police Station, as already detailed hereinabove. The Police Personnel from the Jorethang Police Station have then been frequenting the Office of the Petitioner's Company. (6) On learning of the F.I.R., the Petitioner and the Company Office Bearers arranged funds and on 21.01.2016, deposited the Provident Funds of both Employers and Employees contribution up to date, towards which reliance has been placed on a copy of Challan, marked Annexure P-2. (7) It is prayed that the Petitioner be granted anticipatory bail, in view of the fact that the Petitioner is aged about 70 years, has unquestionable antecedents and belongs to a respectable family with deep roots in society. He undertakes to make himself available for interrogation by the Police, as and when required. (8) Mr. Karma Thinlay Namgyal, Learned Additional Public Prosecutor for the State, submitted that he has no objection to the Application, provided stringent conditions are imposed, viz; the Petitioner cooperates with the Investigating Officer and will not tamper with evidence and related documents pertaining to the employees' Provident Fund contribution for the period involved. (9) Having considered the submissions of both Learned Counsel, I am of the considered opinion that the required

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		conditions under Section 438 Cr. P.C., 1973, are satisfied. Consequently, the Application is allowed. (10) In the event of the arrest of the Petitioner in connection with the instant matter, he shall be enlarged on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand) only, each, to the satisfaction of the Learned Chief Judicial Magistrate (South) at Namchi, subject to the following conditions:- (i) The Petitioner shall make himself available for interrogation by the Jorethang Police Station in connection with the instant case, as and when required. (ii) The Petitioner shall not tamper with any evidence in connection with the case. (iii) The Petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing him such facts to the Court or to any police officer. (iv) He shall not commit offence similar to the instant offence or commit any other offence. (11) In the event, the Petitioner fails to comply with the afore stated conditions, the Investigating Officer shall be at liberty to take the Petitioner into custody.  Judge 29-02-2016 Index : Yes/No Internet : Yes/No

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