

THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Jurisdiction)

S.B.: HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI, CJ.

Bail Appl. No. 07 of 2016

Sachin Rai,
Son of Shri Bal Bahadur Rai,
Resident of Thongling,
West Sikkim.

... Petitioner

versus

State of Sikkim

... Respondent

Appearance:

Ms. Kessang Diki Bhutia and Mr. Ranjit Prasad,
Advocates for the Applicant.

Mr. Karma Thinlay, Addl. Public Prosecutor with Ms.
Pollin Rai, Asstt. Public Prosecutor for the State.

ORAL ORDER
(25.10.2016)

Satish K. Agnihotri, CJ

The instant Application is filed questioning the
correctness of the order dated 17.08.2016, whereby and

whereunder the Bail Application of the petitioner/accused was rejected by the Special Judge (POCSO), West Sikkim at Gyalshing.

2. Facts in brief are that a written FIR was filed on 07.06.2016 at 1400 Hrs., alleging that the petitioner/accused had been molesting a minor girl for a long time and committed rape in February, 2016. On investigation, the petitioner accused was arrested on the same day at 2250 Hrs. After investigation, the petitioner was charge-sheeted for having committed an offence under Section 376/354 of the Indian Penal Code (for short 'IPC) read with Section 6 and 8 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act, 2012').

3. Learned counsel appearing for the petitioner/accused would contend that in the medical examination no physical injury or any sign of rape is found. It is further contended that there was an unreasonable, unexplained delay in lodging the FIR, which clearly indicates false implication of the petitioner/accused. The learned counsel would further submit that the petitioner/accused may be put to any condition and there is no apprehension with regard to tampering of evidence. The petitioner/accused being

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a Sikkimese citizen is available to surrender at any point of time. Thus, the petitioner/accused may be enlarged on bail, as no case is made out against the petitioner/accused.

4. On the other hand, Mr. Karma Thinlay, learned Additional Public Prosecutor submits that the trial is at the stage of recording of evidence and there is likelihood of tampering with the evidence. The petitioner/accused charged under Section 376/354 IPC which is punishable with rigorous imprisonment for a term which shall not be less than ten years and may extend to imprisonment for life. In such view of the matter, the petitioner/accused may not be released on bail at this stage.

5. Having considered all aspects of the matter, particularly, the nature of offence allegedly having been committed by the petitioner/accused on a minor girl, without expressing any opinion on merit of the case, I am of the considered opinion that the petitioner/accused is not entitled bail at this stage, when the recording of evidence is at progress and also the punishment of rigorous imprisonment for minimum ten years.

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6. Resultantly, the application/petition is dismissed.
However, the petitioner/accused is at liberty to move a fresh
application, if so advised, at a later point of time.


Chief Justice
25.10.2016

Approved for Reporting : Yes/No.
Internet : Yes/No.

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