

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

Crl. A. No. 15 OF 2016

Nedup Bhutia,
R/o 3rd Mile,
J. N. Road,
East Sikkim.

----- Appellant.

-VERSUS-

The State of Sikkim. ----- Respondent.

PETITIONER
ADVOCATE (S)
FOR ----- Mr. R. C. Sharma.

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

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01.	28-04-2016	Crl.A. No. 15 of 2016 Shri Nedup Bhutia vs. The State of Sikkim BEFORE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE Present : Mr. R. C. Sharma, Advocate for the Appellant. Mr. Nedup Bhutia, Appellant in person. Mr. S. K. Chettri and Mrs. Pollin Rai, Assistant Public Prosecutors for the State. ----- I.A. No.01 of 2016 Heard. Order reserved till 12.30 p.m. I.A. No.01 of 2016 Learned Counsel for the Appellant submits that vide impugned Judgment dated 26-02-2016 and Order on Sentence dated 29-02-2016, the Appellant was convicted by the Learned Special Judge, Protection of Children from Sexual Offences Act, 2012, East District at Gangtok, Sikkim, in S.T. (POCSO) Case No.27 of 2014, for the offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012 (for short "the Act"). The Learned Trial Court, handed out to the Appellant a sentence of rigorous imprisonment for three years and fine of Rs.5,000/- (Rupees five thousand) only, with a default clause of imprisonment under the above provision of Law. Upon application for bail before the Learned Trial Court on 29-02-2016,

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		bail was granted to the Appellant for a period of two months which is to expire today. It is submitted by Learned Counsel for the Appellant that the Appellant is aged about 56 years with a family comprising of his wife and minor children, is a responsible citizen, a Sikkimese, having his home and hearth here and was on bail throughout the trial and did not misuse the liberty granted to him. Hence, he will not abscond if enlarged on bail. That, apart from the above, consideration may be taken of the fact that there are contradictions in the evidence of the victim and the Medical Report does not support the Prosecution case, hence, it is prayed that in the light of the above circumstances, the Appellant be enlarged on bail and the sentence passed by the Learned Trial Court be suspended. <i>Per contra</i>, the Petition of the Appellant seeking bail and suspension of sentence was vehemently objected to by the Learned Assistant Public Prosecutor, <i>inter alia</i>, on grounds that the Learned Trial Court has found the Appellant guilty of the offence under Section 8 of the Act and convicted him accordingly. That, the victim was 8 years old at the time of the incident and the Judgment of the Learned Trial Court clearly lays down that her evidence has been cogent and consistent pertaining to the offence and the Appellant being a man, aged about 56 years, had committed the offence who, therefore, requires no consideration. Accordingly, the Bail Petition and prayer for suspension of sentence is rejected. I have heard the rival contentions put forth by Learned Counsel. I have also perused the impugned Judgment and Order on Sentence.

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		What this Court requires to consider for the present purposes is whether reasons exist to suspend the execution of sentence and thereafter grant bail. At this stage, I will not enter into a reappraisal of the evidence and the merits of the case which will obviously be considered at the time of hearing of the Appeal. However, it may be pointed out that this Court cannot be swayed by the mere fact that during the trial the Appellant was on bail and he did not misuse the liberty thereof considering the gravity of the offence. The effect of bail granted during the period of trial becomes insignificant on completion of trial and on the accused being found guilty. It may be true that the Appellant did not misuse his liberty but this does not <i>per se</i> warrant suspension of sentence and grant of bail. Taking into consideration the entire gamut of facts and circumstances placed before this Court, in the instant matter and in view of the fact that the Learned Trial Court has found the accused guilty under Section 8 of the Act for, an act committed by him on a mere 8 year old child, I do not deem it necessary to exercise discretion in favour of the Appellant. Consequently, the Petition praying for suspension of sentence and enlargement on bail by the Appellant, stands rejected. The Appellant be taken into custody at once by the Superintendent of Police, East District, Sikkim at Gangtok. The Appellant be produced by him before the Learned Special Judge, Protection of Children from Sexual Offences Act, 2012, East District at Gangtok, Sikkim, to undergo imprisonment in terms of the impugned Judgment and Order on Sentence. I hasten to add that the observations in this Order will have no bearing on the merits of the Appeal.

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		I.A. No.1 of 2016 stands disposed of accordingly. A copy of this Order be sent to the Learned Special Judge, Protection of Children from Sexual Offences Act, 2012, East District at Gangtok, Sikkim. List for hearing on admission on 20-05-2016.  Judge 28-04-2016 Index : Yes/No Internet : Yes/No

ds/bp