

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

Crl. A. No. 34 OF 2015

Suresh Chettri,
S/o Late Ran Bahadur Chettri,
R/o Phungla Busty, P. S. Namchi,
South Sikkim.

At present:

Residing at Tingley Busty,
Bermiok, Temi P. S.,
South Sikkim.

----- Appellant (in Jail).

-VERSUS-

State of Sikkim.

----- Respondent.

PETITIONER

ADVOCATE (S)

FOR ----- Jigme P. Bhutia, Legal Aid Counsel.

RESPONDENT

ADVOCATE (S)

FOR ----- Mr. 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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03.	16.03.2016	Crl. A. No. 34 of 2015 Suresh Chettri vs. State of Sikkim BEFORE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE Present: Mr. Jigme P. Bhutia, Legal Aid Counsel for the Appellant. Mr. Karma Thinlay Namgyal, Addl. Public Prosecutor with Mrs. Pollin Rai, Asst. Public Prosecutor for the State-Respondent. ----- <u>I.A. No. 1 of 2015</u> (1) Heard. (2) It is submitted by Learned Counsel for the Appellant that the Appellant was convicted under Section 304 Part II of the Indian Penal Code, 1860 (for short "IPC") and sentenced to undergo rigorous imprisonment for five years with a fine of Rs.5000/- (Rupees five thousand) only, and a default clause of imprisonment. He was acquitted of the offence under Section 498A of the IPC. (3) During the course of the trial, the Appellant was on bail till his conviction. He did not misuse or violate any of the terms and conditions set out for bail. Now, on the pronouncement of the impugned Judgment and Sentence, he is incarcerated in Jail. That, the imprisonment, as evident is not life imprisonment nor does it extend to ten years, therefore, the discretion of the Court be exercised in suspending his Sentence and granting him bail keeping in mind his conduct during the trial. To buttress his submissions,

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		Learned Legal Aid Counsel for the Appellant, has placed reliance on Angana & Anr. Vs. State of Rajasthan : AIR 2009 SC 1669. (4) <i>Per contra</i>, it is the argument of Learned Additional Public Prosecutor for the State, that the facts of each case are to be considered on its own merits and the Appellant has to make out an exceptional case for suspension of sentence and release on bail. That, the Appellant has failed to make out such grounds and his Petition requires no consideration and deserves rejection in view of the offence committed. He has placed reliance on Kishori Lal vs. Rupa And Others: (2004) 7 SCC 638. (5) I have considered the arguments advanced by both Learned Counsel. (6) It may be pointed out here that each case is to be considered on the basis of the nature of offence committed and there is no formula to be applied while exercising discretion. One of the grounds for suspension of sentence and enlarging the petitioner on bail is the consideration that the hearing of appeals can be delayed and the appellant will have to stay in jail for long periods of time sometimes resulting in travesty of justice. In the instant case, this is not so, since appeals in this High Court are heard expeditiously. (7) In Angana & Anr. Vs. State of Rajasthan supra, relied on by Learned Legal Aid Counsel for the Appellant, the Hon'ble Apex Court has laid down, <i>inter alia</i>, that when an appeal is preferred against conviction in the High Court, the Court has ample power and discretion to suspend the sentence but that

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		discretion has to be exercised judiciously depending on the facts and circumstances of each case. (8) In the backdrop of the above decision, I have objectively assessed the matter. I have taken into consideration the manner in which the crime was allegedly committed and the gravity of the offence. I, however, refrain from expressing any opinion on the merits or demerits of the case. (9) In conclusion, I am of the considered opinion that merely because the Appellant did not flout the bail conditions during trial does not entitle him to suspension of Sentence or release on bail. Consequently, the Petition for suspension of Sentence and bail deserves no consideration and stands rejected. (10) I.A. No. 1 of 2015 stands disposed of accordingly. (11) Trial Court records have been received. (12) Paper-books be prepared. (13) Hearing on Appeal be fixed on 17.05.2016, as found convenient by the parties. <i>sdl</i> Judge 16.03.2016
Index : Yes / No Internet : Yes / No		
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