

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Jurisdiction)

DATED : 16th April, 2021

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

Bail Appln. No.06 of 2021

Petitioner/Applicant : Lopsong Lama Yolmo

versus

Respondent : State of Sikkim

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

Appearance

Mr. B. Sharma, Senior Advocate with Mr. B.N. Sharma, Mr. Bhupendra Giri and Mr. Charles L. Lucksom, Advocates for the Petitioner/Applicant.

Mr. Yadev Sharma, Additional Public Prosecutor for the Respondent.

O R D E R

Meenakshi Madan Rai, J.

1. The Petitioner, Principal of a School, aged about 58 years, is accused of the offence under Section 354 of the Indian Penal Code, 1860, Section 8 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act") and Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015. He was arrested on 03.03.2021 in connection with Namchi Police Station Case bearing FIR No.07/2021 of the same date.

2. Learned Senior Counsel for the Petitioner, apart from submitting that the Petitioner is innocent and falsely implicated in the instant case urged that he is a responsible person running a well established Private School and is also a Politician having been

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elected as a Councillor and given the responsibility of Vice Chairman of the Gorkha Territorial Administration. That, he is a well reputed Social Worker and owns large property in South Sikkim. That, the investigation in the matter has been completed and he is no longer required in custody. That, the FIR was lodged on 03.03.2021 and he has been hospitalized from 04.03.2021 (forty four days) on account of his numerous ailments. On this count, reliance was placed on the medical document addressed by the Medical Superintendent, Namchi Hospital to the Assistant Superintendent of Police (Prison), Namchi, South Sikkim, dated 01.04.2021. It was urged by Learned Senior Counsel that the Petitioner is suffering from Diabetes Mellitus, Heart disease, Dyslipidemia, Hypertension, Hyperuricemia and Renal Calculus. That, the Doctor has observed that a Hypoglycemic attack may occur at any time of the night and has to be tackled urgently, this ground alone suffices for grant of bail. That, the Statement of the victim was recorded under Sections 164 and 161 of the Code of Criminal Procedure, 1973 wherein an effort has been made by her to improve her case. The Petitioner is also responsible for the education of his niece and nephew for whom he bears the financial burden besides which, he is the caregiver to his 86 year old mother who lives with him. That, the previous application for bail filed by the Petitioner before the Court of the Learned Special Judge, POCSO Act, 2012 at Namchi, South Sikkim was rejected vide Order dated 15.03.2021 without due consideration of the grounds put forth. That, should the Petitioner be enlarged on bail, he is willing to abide by all conditions imposed by this Court.

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3. Opposing the petition for bail, Learned Additional Public Prosecutor put forth the contention that the victim is a child of 17 (seventeen) years studying in the School run by the Petitioner as the Principal. That, the Petitioner while paying personal attention to the victim touched her inappropriately and gave indirect hints seeking sexual favours from her. He also verbally abused her, made her do household chores and give him massages. That, since the date of his arrest, the Petitioner has remained in the Hospital with the purpose of defeating the law. That, Charge-Sheet is yet to be submitted and further investigation in the matter is being continued during the course of which, it has come to light that the mother of the victim who was the Complainant, is being pressurized to change her Statements against the Petitioner and also that he had perpetrated the same acts on other girl Students as he did on the victim. Succour on this point was drawn from the Letter addressed by the Complainant to the concerned Chief Judicial Magistrate on 11.03.2021. That, should this Court exercise its discretion in favour of the Petitioner, in all likelihood, he will abscond as not only is he an influential person by his own admission in the submissions made by his Counsel but being a resident of West Bengal, it would be difficult to secure his presence at the trial. Moreover in all likelihood, he would return to run his School in which there are many girl Students therefore repetition of the offence cannot be ruled out for the aforementioned reasons. Hence the Petition for bail be rejected.

4. I have duly considered the submissions of Learned Counsel for the parties and perused all documents on record.

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5. It is now well settled that the circumstances which are to be factored in while considering an application for bail are; (i) existence of *prima facie* case against the accused, (ii) the nature and gravity of the accusations, (iii) the penalty likely to be imposed, (iv) chances of the accused absconding on being enlarged on bail, (v) the antecedents and standing of the accused in society; (vi) likelihood of repetition of the offence, (vii) reasonable apprehension of evidence being tampered with and witnesses being influenced; and (viii) the course of justice being defeated by grant of bail. On the anvil of these factors, I have given due consideration to the FIR and the medical documents on record.

6. The FIR lodged by the victim's mother reveals that her child was a boarder studying in the Private School of the Petitioner. She was inappropriately touched by the Petitioner, mentally harassed and verbally abused by him. That, the Petitioner also told the victim, his Student, that he wanted to marry her and when she refused his overtures, he leaked their photographs by editing it and putting the victim's reputation in jeopardy.

7. The Doctor vide his Communication *supra*, has observed that the Petitioner has been on medication for his ailments reflected therein, for many years. He has also recorded that the Petitioner's condition is stable. The Doctor apprehends a Hypoglycemic attack which, according to him, requires to be managed immediately on its occurrence. It is worth observing here that presently there is no immediate threat to his life. All his ailments are under control and well managed by medication. The gravity of the offence is necessarily to be taken into consideration by this Court and the acts of the Petitioner are indeed heinous

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having been perpetrated on a minor under his care and guidance. The next consideration would be the likelihood of the Petitioner fleeing from justice and his tampering with the Prosecution evidence. There was no denial of the allegation that efforts were being made to influence the Complainant by people from various walks of life known to the Petitioner. Moreover, his efforts at tampering with the witnesses is writ large in the form of the copy of the Letter placed before this Court, discussed hereinabove. No one however high he may be, is above the law and merely by stating that he is a Politician and an elected Councillor, does not entitle him to be enlarged on bail sans consideration of the offence alleged to have been committed by him. These considerations weigh directly for ensuring a fair trial in the concerned Court, thus due and proper weight ought to be bestowed on the two factors reflected *supra*. Considering the nature and seriousness of the offence, the evidence furnished at this stage and circumstances peculiar to the Petitioner in terms of his position in society, a reasonable possibility exists of the presence of the Petitioner not being secured at the trial, besides, likelihood of the offence being repeated. It is also noted that he has been in Hospital from 04.03.2021, a day after lodging of the FIR which is about forty four days as on today i.e. 16.04.2021. He cannot attempt to thwart the course of justice by staying in the Hospital endlessly.

8. In view of the discussions hereinabove, I am of the considered opinion that there is a *prima facie* case against the Petitioner, although I make it clear that at this stage, elaborate examination of evidence has not been embarked upon nor are the merits of the case being touched upon, this is to avoid any

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prejudice to the Petitioner. The Bail Application thus deserves to be and is accordingly rejected and disposed of.

9. Before parting with the matter, it is essential to direct the Medical Superintendent who has issued the Communication dated 01.04.2021 to the Assistant Superintendent of Police (Prison) regarding the medical condition of the Petitioner, to brief the Jail authorities in this context. All necessary medications of the Petitioner shall be made available for him in the Jail. The Medical Superintendent shall send a Doctor for the Petitioner's medical examination on every Monday and Thursday of the week or as and when deemed necessary by the Medical Superintendent.

10. Copy each of this Order be sent to the Medical Superintendent, Namchi District Hospital and the Senior Superintendent of Police (Prison), District Prison, Boomtar, South Sikkim, for information and compliance.

11. Copy of this Order also be sent to the Learned Trial Court, for information.

(Justice Meenakshi Madan Rai)
Judge

16.04.2021

Approved for reporting : Yes