

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appeal Jurisdiction)

DATED : 4th NOVEMBER, 2017

**DIVISION BENCH : THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI, CHIEF JUSTICE
THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

I.A. No.01 of 2017 in CrI.A. No.24 of 2017

Petitioners : 1. Prem Kumar Tiwari,
S/o Late Jagat Bahadur Tiwari,
2. Arjun Tiwari,
S/o Late Jagat Bahadur Tiwari,
3. Dhan Maya Chettri,
W/o Prem Kumar Tiwari,
4. Mallika @ Bhagirathi Tiwari,
D/o Late Jagat Bahadur Tiwari,
All residents of Lower Kyongsa,
Gyalshing,
West Sikkim.
[Presently in Central Prison,
Rongyek, East Sikkim]

versus

Respondent : State of Sikkim

Application under Section 389(1)
of the Code of Criminal Procedure, 1973

Appearance

Mr. N. Rai, Senior Advocate with Ms. Tamanna Chhetri, Ms. Malati Sharma and Mr. Suraj Chettri, Advocates for the Appellants.

Mrs. Pollin Rai, Assistant Public Prosecutor for the State-Respondent.

O R D E R (ORAL)

Satish K. Agnihotri, C.J.

1. Heard.

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2. Appellants No.1, 2 and 3 were convicted under Sections 302 and 120B read with Section 34 of the Indian Penal Code (for short "IPC") and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.50,000/- (Rupees fifty thousand), only, for each of the aforesaid sentences. The sentences were ordered to run concurrently.

3. The Appellant No.4 was convicted under Section 201 of the IPC and sentenced to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.50,000/- (Rupees fifty thousand) only, with a default stipulation.

4. It is submitted by Learned Counsel for the Appellant that, since conviction by the impugned Judgment dated 21-07-2017, in Sessions Trial Case No.09 of 2015, the Appellants have been serving their sentence. That, infact, they were on bail throughout the trial, but have not misused the liberty during the said period. It is also urged that the Prosecution case is weak and the conviction is based only on the alleged statement of the co-accused under Section 164 of the Code of Criminal Procedure, 1973. Therefore, the Petitioners have a fair chance of an acquittal in Appeal. Besides, the Appellants/Petitioners No.1 and 2 are the only earning members of the family with small children to care for, who are now alone in the house.

5. *Per contra*, the Petition for Bail is objected to by Learned Assistant Public Prosecutor, as Learned Trial Court has reached a reasoned finding and they ought to undergo their sentence.

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6. We have considered the rival submissions of Learned Counsel for the parties. We have also perused the relevant records.

7. For the present purposes, what requires consideration is, whether the sentence ought to be suspended and the bail to be granted. For obvious reasons, this Court will desist from reappraising the evidence or considering the merits of the case at this stage.

8. Be that as it may, it would not suffice to merely state that the Appellants did not misuse the liberty of bail at the time of trial for the purposes of granting bail. The gravity of the offence has to be given due consideration.

9. Thus, considering the entire facts and circumstances and in view of the finding of the Learned Trial Court, it is not found expedient to exercise discretion in favour of the Appellants.

10. Consequently, the Petition for Bail stands rejected, with the clarification that this Order will have no bearing on the merits of the Appeal.

(Meenakshi Madan Rai)
Judge
04-11-2017

(Satish K. Agnihotri)
Chief Justice
04-11-2017

Approved for reporting : **Yes**

Internet : **Yes**