

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

DATED : **26.12.2018**

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

I.A. No. 01 of 2018 in CrI.A. No. 40 of 2018

Applicant/Convict/Appellant : Trilochan Kapoor Sharma,
S/o Late Hari Singh Sharma,
R/o Rhenock Bazaar,
East Sikkim.

versus

Respondent : State of Sikkim.

Application under Section 389
of the Code of Criminal Procedure, 1973

Appearance:

Mr. B. Sharma, Senior Advocate with Mr. Rajendra Upreti and Mr. Safal Sharma, Advocates.

Mr. Karma Thinlay and Mr. Thinlay Dorjee Bhutia, Additional Public Prosecutors with Mr. S.K. Chettri and Ms. Pollin Rai, Assistant Public Prosecutors.

ORDER

Meenakshi Madan Rai, J.

- 1.** The Applicant is before this Court seeking suspension of judgment of conviction and sentence of imprisonment and enlargement on bail on any stringent conditions.
- 2.** Learned Senior Advocate Mr. B. Sharma submitted that the Applicant was convicted in S.T. (Vigilance) Case No. 01 of

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2017 (State of Sikkim v. Trilochan Kapoor Sharma) on 29.09.2018 under Sections 468, 420, 471, 419 and 201 of the Indian Penal Code, 1860 and Section 13(2) of the Prevention of Corruption Act, 1988. The maximum penalty awarded to the Applicant was imprisonment for a period of one year and fine of Rs.10,000/- (Rupees ten thousand) only, under Section 13(2) of the Prevention of Corruption Act, 1988. That since his first appearance before the learned Trial Court on 23.09.2014, the Applicant has been on bail and has not misused the liberty. On this count reliance was placed on ***Sunil Kumar v. Vipin Kumar and others.***¹ That apart, the Applicant is a permanent resident of Rhenock, East Sikkim, holds a prestigious post in the State Government and therefore he will not abscond. Besides, he is also a patient of mental illness and is under treatment towards which Medical Certificate dated 13.01.2018 has been relied on which indicates that he is on life-long medication for mental illness. He is also a diabetic patient on insulin and should he be incarcerated, he will suffer mental and physical consequences and hence the prayer for enlargement on bail. To further buttress his submissions, learned Senior Counsel placed reliance on ***Satyendra Kumar Mehra @ Satendera Kumar Mehra v. The State of Jharkhand***² wherein the Hon'ble Supreme Court would hold that there are no fetters on the power of the Appellate Court while exercising

¹ (2014) 8 SCC 868

² Criminal Appeal No. 406 of 2018

jurisdiction under Section 389 of the Code of Criminal Procedure, 1973.

3. Learned Additional Public Prosecutor, Mr. Karma Thinlay while objecting to the prayer for bail contended that the Medical Report relied upon by the Applicant pertains to the year 2008 till 2012 and the Applicant has not indicated any exceptional circumstance for granting bail to him. That it is now a settled principle of law that merely because the liberty granted to the Applicant by way of bail in the learned Trial Court was not misused by him is of no significance since he has been convicted on completion of trial. That the benefit of suspension of sentence can be granted only in exceptional circumstances, which however, have not been made out in the instant petition and since the conviction is also under Section 13(2) of the Prevention of Corruption Act, 1988, the petition deserves to be dismissed. Learned Additional Public Prosecutor placed reliance on ***State of Maharashtra v. Balakrishna Dattatrya Kumbhar***³ wherein the Hon'ble Supreme Court has held that while exercising powers under Section 389 Cr.P.C. not only must there be circumspection and caution but the Applicant must satisfy the Court as to the consequence that is likely to befall him if the condition is not suspended.

³ (2012) 12 SCC 384

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4. Heard learned Counsel at length. I have also perused the documents relied on by the Applicant.

5. In the instant case, it is evident that the Applicant is a patient of Schizo Affective Disorder. It is also seen that the condition could fluctuate between nearly normal to full blown psychosis in a short course of time. Evidently, the Applicant is being treated as an out-patient in both STNM Hospital, Gangtok and NIMHANS, Bangalore and is on life long medication. Besides, it is also submitted that he is a diabetic patient. In the said facts and circumstances, the grounds made out are sufficient to suspend the sentence and enlarge the Applicant on bail.

6. In the result, the Applicant be enlarged on bail on furnishing PB&SB of Rs.35,000/- (Rupees thirty five thousand) only, each, with one solvent surety, to the satisfaction of the learned Special Judge, Prevention of Corruption Act, 1988, South Sikkim at Namchi. He shall, however, not leave Sikkim without the prior permission of the learned Special Judge, Prevention of Corruption Act, 1988, South Sikkim at Namchi.

7. Sentence imposed by the learned Trial Court against the Applicant stands suspended till further orders.

8. The I.A. is allowed and disposed of accordingly.

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9. A copy of this Order be sent to the learned Special Judge, Prevention of Corruption Act, 1988, South Sikkim at Namchi.

10. Certified copies be made available to the parties, as per Rules.

(Meenakshi Madan Rai)
Judge
26.12.2018

Approved for reporting: **Yes**
Internet: **Yes**

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