



IN THE HIGH COURT OF SIKKIM

ORDER SHEET

CRIMINAL REVISION PETITION.....No. **01** of 200 **5**

DIL HASAN ANSARI..... Petitioner / Appellant

Versus

STATE OF SIKKIM..... Respondent

| Serial No. of Order | Date of Order | Order with Signature | Office Note as to action (if any) taken on Order |
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| 1. | 01.02.2005 | <p>Present : Mr. Chaman Rai, learned Counsel for the accused/petitioner.</p> <p>Mr. J. B. Pradhan, learned Public Prosecutor for the State.</p> <p>-----</p> <p>Heard Mr. Chaman Rai, learned Counsel for the accused/petitioner and Mr. J. B. Pradhan, learned Public Prosecutor for the State.</p> <p>The order dated 9.12.2004 passed by the learned Sessions Judge, South and West at Namchi in Criminal Misc.Case No.69 of 2004, Dil Hasan Ansari versus State of Sikkim and the order dated 28.12.2004 passed by the same Court in Criminal Misc.Case No.79 of 2004, Dil Hasan Ansari versus State of Sikkim are the subject matters of challenge in the present revision petition. Vide the impugned order dated 9.12.2004, the learned Sessions Judge admitted the accused petitioner to bail subjecting his release on bail to his furnishing personal bond of Rs.2,00,000,00/- (Rupees two crores) only, with two solvent sureties of Rs.50,000.00 (Rupees fifty lakhs) only, each and vide the other impugned order dated 28.12.2004, the prayer made by the accused petitioner to reduce the amount of surety bond was rejected.</p> <p>Mr. Chaman Rai, learned Counsel appearing for the accused/petitioner submitted that he had</p> | |



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| | | <p>no grievance with regard to the amount of personal bond. However, with regard to the surety bond, he submitted that the amount of Rs.50 lakhs, fixed on surety bond by the learned Sessions Judge, South and West at Namchi for the release of the petitioner is excessive and amounts to denial of bail. According to him, the petitioner tried his utmost to furnish sureties of Rs.50 lakhs each in terms of the order dated 9.12.2004, but could not do so, since no surety of that amount was available. Being thus unable to furnish the two sureties, the petitioner filed Criminal Misc. Case No.79/2004 in the Court of the Sessions Judge (S&W), for relaxation of the conditions but the same was rejected.</p> <p>In support of his submission that the amount of surety as fixed is high, and, as such, amounts to denial of bail itself, the learned Counsel relied on the decision of the Hon'ble Supreme Court in <i>Keshab Narayan Banerjee & Another versus The State of Bihar - AIR 1985 SC 1666</i> and in support of his other submission that a reduction in the amount of surety bond was called for he relied on the decision of this Court in Criminal Revision No.11 of 2003 - Buddhiman Subba versus State of Sikkim.</p> <p>In the course of his submissions the Ld. Counsel also brought it to the notice of the Court that the charge sheet in the case has since been filed.</p> <p>Mr. J. B. Pradhan, learned Public Prosecutor, in his usual fairness submitted that in view of the fact that charge sheet has been filed in the case and also keeping in view the decisions referred to and</p> | |



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| | | <p>relied on by the learned Counsel for the petitioner, and also the law laid down by the Hon'ble Supreme Court in <i>Moti Ram and Othêr's versus State of Madhya Pradesh - (1978) 4 Supreme Court Cases 47</i> the State had no objection if the amount fixed for the surety bond is reasonably reduced in the interest of justice .</p> <p>Considered. The decision of the Hon'ble Supreme Court relied on by the learned Counsel for the petitioner lays down that if the amount fixed for surety bond is heavy and beyond the capacity of the accused person, the same amounts to denial of bail. A perusal of the order dated 18.6.2003 passed by this Court in Crl. Revision Petition No.11 of 2003 also referred to and relied on by the petitioner shows that this Court keeping in view the hardship faced by the accused petitioner in the case on account of the amount fixed for surety bond being high reduced the amount of Rs.20,000,00 (Rupees twenty lakhs) fixed by the trial Court for surety bond to Rs.10,000,00 (Rupees ten lakhs) to secure the ends of justice. Further, we cannot loose sight of the fact that the general provision contained in Sec.440 of Cr.P.C. which deals with amount of bond and reduction thereof lays down that the amount of every bond executed under the chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive.</p> <p>For the reasons and observations made above, this Court is of the view that a reasonable reduction of the surety amount so as to make it within the reach of the petitioner is called for, for</p> | |



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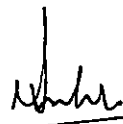
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the advancement of justice in the facts and circumstances of the present case. Accordingly, it is ordered that the accused/petitioner may be released on bail on furnishing two sureties in the amount of Rs.30 lakhs, (Rupees thirty lakhs) each, to the satisfaction of the learned Sessions Judge, South and West at Namchi, South Sikkim. The impugned order dated 28.12.2004 passed in Criminal Misc. Case No.69 of 2004 stands modified to the extent indicated above.

The Revision Petition is accordingly allowed.

Let a copy of this order be sent to the learned Sessions Judge (S&W) Namchi forthwith for needful compliance.


(A. P. Subba)
Judge
01.02.2005

A Copy of order
forwarded to Sessions
Judge (S&W) on for
on 21/2/05.
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