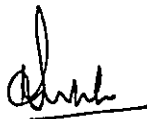
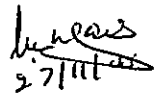




Serial No. of Order	Date of Order	Orders with signature	Office Note as to action (if any) taken on order
08.	26.11.2008	<p>Present: Mr. Karma Thinlay, Additional Public Prosecutor for the State-Revitionist/ Petitioner.</p> <p>Mr. D. R. Thapa, Advocate for the Accused-Respondent.</p> <p>-----</p> <p>This Revision Petition filed by the State of Sikkim is directed against the Order dated 1st September, 2008 passed by the learned Chief Judicial Magistrate (E & N) in Crl. Misc. Case No.135 of 2008 (State vs. Om Nath Adhikari) whereby the learned Court had granted bail to the respondent herein.</p> <p>Heard the learned counsel for the parties.</p> <p>Mr. D. R. Thapa, learned counsel appearing on behalf of the accused- respondent submitted that the impugned order being a bail order is an interlocutory one and no revision would lie. In answer to this question, the learned Additional Public Prosecutor without disputing the position of law with regard to the revision of bail order submitted that he will confine his prayer only to expunction of remarks.</p> <p>The only grievance made by the learned Additional Public Prosecutor for the State is that the Court while passing the bail order made an observation which, according to him, is uncalled for and is prejudicial to the interest of the prosecution. It is also submitted that the observation, if allowed to remain on record</p> <p>2</p>	



Serial No. of Order	Date of Order	Orders with signature	Office Note as to action (if any) taken on order
		<p>will amount to implied discharge of the accused.</p> <p>The observation in question which occurs in paragraph 7 of the impugned order is as follows:-</p> <p>"..... I find that the petitioner who is a R.D.A. working under RMDD is not liable for the offence as he is not directly connected with the alleged offence."</p> <p>It is a settled law that while deciding a bail application the Court is required to confine itself to the question of <i>prima facie</i> case and must touch only the barest minimum facts necessary to come to the conclusion about the existence or otherwise of a <i>prima facie</i> case. Keeping this position of law in view it goes without saying that the observation made by the learned trial Court while granting the bail is uncalled for and as submitted by the learned Additional Public Prosecutor amounts to implied discharge of the accused.</p> <p>Accordingly, the petition is allowed and the observation quoted above is hereby expunged from the impugned order.</p> <p>This petition stands disposed of.</p> <p>Send a copy of this order to the concerned Court for information and guidance.</p> <p> (Justice A. P. Subba) Acting Chief Justice 26-11-2008</p>	<p>A Copy of order forwarded to CJM on 22-11-08 by  27/11/08</p>