



# IN THE HIGH COURT OF SIKKIM

## CRIMINAL JURISDICTION

BAIL APPL. No.....01.....of 20.....10

DAWA TSHERING LEPCHA

Appellants (s)  
Petitioner (s)

Versus

STATE OF SIKKIM

Respondent (s)  
Opposite party (s)

Appellant

For

Petitioner  
(Advocate (s))

MR. ZANGPO SHERPA AND  
MR. PEM TSHERING LEPCHA

Respondent

For

Opposite Party  
(Advocate (s))

MR. J. B. PRADHAN, PUBLIC PROSECUTOR WITH  
MR. KARMA THINLAY NAMGYAL, ADDL. PUBLIC  
PROSECUTOR AND MR. SANTOSH KUMAR CHETTRI,  
ASSISTANT PUBLIC PROSECUTOR

Serial No.	Date	Order (s) with Signature (s)
1	2	3
		<b>BEFORE</b> <b>HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE</b>
01.	15.03.2010	<p>Present : Mr. Zangpo Sherpa, Advocate assisted by Mr. Pem Tshering Lepcha, Advocate for the accused/petitioner.</p> <p>Mr. J. B. Pradhan, Public Prosecutor assisted by Mr. Karma Thinlay Namgyal, Addl. Public Prosecutor and Mr. Santosh Kumar Chettri, Assistant Public Prosecutor for the State of Sikkim.</p> <p>*****</p> <p>This petition has been filed under Section 439 of the Cr.P.C. for enlargement of bail of the petitioner who</p>



Case No. Bail Appl. No. 01/2010

Serial No.	Date	Order (s) with Signature (s)
1	2	3
		<p>was arrested by the police from the Sadar P.S. in connection with Sadar P.S. Case No. 106(12)09 dated 20.12.2009 under Sections 120(b), 201, 302 IPC on 23.12.2009.</p> <p>2 Mr. Zangpo Sherpa, Advocate assisted by Mr. Pem Tshering Lepcha, Advocate appearing on behalf of the accused/petitioner submits that there are no materials against the accused/petitioner to be charged for the offences alleged against him and that even assuming that there are materials against the petitioner, it was permissible in law to enlarge him on bail if it appears in the circumstances of the case that he shall not abscond or tamper with the evidence. The learned counsel assures this Court that the petitioner shall face the trial and for that purpose he is ready to produce a local surety. It is his submission that this Court has the power under Section 439 Cr.P.C. being quite distinct from the powers under Section 437 by which this Court wields wider discretions and that the Court can exercise and ought to exercise such discretion also on the principles of equity for the reason that the principal accused Smt. Passangkit Lepcha, has already been released on bail. The learned Counsel for the accused/petitioner has placed in support of his submissions the following decisions: -</p> <ol style="list-style-type: none"><li>1. (2005) 2 SCC 13 – Jayendra Saraswathi Swamigal vs. State of T.N.</li><li>2. AIR 1994 Supreme Court 373 – 1984 Cr.L.J.160 – Bhagirathsinh Judeja vs. State of Gujarat</li><li>3. (2009)5 SCC 283 – Izharul Haq Hamid Shaikh &amp; Another vs. State of Gujarat</li></ol>

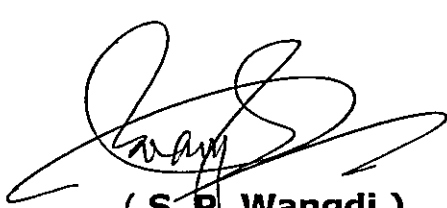


Case No. Bail Appl. No. 01/2010

Serial No.	Date	Order (s) with Signature (s)
1	2	3
		<p>4. 2003(2)ALD(Cri)17, Cril.1736 – Jeet Ram &amp; etc.etc. vs.State of Himachal Pradesh</p> <p>3. On the other hand, Mr. J. B. Pradhan, learned Public Prosecutor appearing on behalf of the State opposes the application on the ground that there are sufficient materials to bring home the charge of the offences against the accused person. Materials collected thus far clearly indicate the involvement of the accused/petitioner in the conspiracy to commit the offence before its commission, his having played the necessary role in the commission of the offence and later having left the place of offence together with the accused person. Mr. Pradhan submits that the release of the principle accused was on account of the fact that she was a lady, a consideration provided as a departure or an exception under the first proviso to Section 437 of the Cr.P.C.</p> <p>4. I have considered the rival contentions of parties and also perused the C.D. furnished during the course of the hearing by the Investigating Officer and I am of the view that it shall not be permissible for this Court to exercise its discretion in favour of the accused/petitioner at this stage. No doubt, this Court exercises wide and unfettered discretion and also that while exercising such powers it is not controlled by the limitations prescribed under Section 437 Cr.P.C., but such discretion can be exercised only in strong and exceptional cases. It is well settled that when the Court exercises such wide discretions, it is to be exercised judicially and not by being blind to provisions of Section 437(1) Cr.P.C. which necessarily need to be taken as a guiding principle.</p>



Case No. Bail Appl. No. 01/2010.

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		<p>5. No circumstances that make out a strong and exceptional case have been placed on behalf of the accused/petitioner, for this Court to exercise its discretion in allowing the application. The principles of law laid down and discussed in the various judgments cited on behalf of the accused/petitioner are well settled, but have no application in the present facts and circumstances of the case. There also do not appear any reason for this Court to differ with the findings of the learned Sessions Judge, East and North Sikkim, reflected in its order dated 04.03.2010 in CrI.Misc. Case No.6 of 2010, as there is no change in the circumstances reflected therein.</p> <p>6. The bail application is accordingly dismissed. Needless to observe that it is open for the accused person to approach the trial Court and take up all grounds available to him at the appropriate stage of the trial after the charge sheet is filed. I have been informed by the learned Public Prosecutor that the charge sheet is due to be filed any day.</p> <p>No costs.</p> <div style="text-align: center;"> ( S. P. Wangdi ) <b>JUDGE</b></div>