

**IN THE HIGH COURT OF MANIPUR  
AT IMPHAL**

**MC(Cril.A.) No. 28 of 2020**

*Ref:- Cril.A. No. 25 of 2019*

Thokchom Dharma Singh @ Paul, aged about 46 years, S/o Th. Gouro Singh, resident of Andro Kharam Leikai, P.O. Yairipok, P.S. Andro, Imphal East District, Manipur-795149.

-- -- -- ***Applicant/Appellant***

- VERSUS -

The State of Manipur

-- -- -- ***Respondent***

BEFORE  
**HON'BLE MR. JUSTICE M.V. MURALIDARAN**

For the applicant :: Mr. S. Rajeetchandra, Adv.,

For the Respondent :: Mr. H. Samarjit, PP

Date of Hearing and  
reserving Judgment & Order :: 12.08.2021

Date of Judgment & Order :: **28.09.2021**

**JUDGMENT AND ORDER**  
(CAV)

This petition has been filed by the petitioner under Section 389 read with Section 482 Cr.P.C. seeking to release him on bail pending the disposal of the criminal appeal.

2. By the judgment dated 29.05.2019 in Special Trial (POCSO) Case No.3 of 2017, the learned Special Judge, Imphal East, convicted the petitioner-first accused for the offence under Section 10 of Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act"), while acquitting the second accused under Section 21(2) of the POCSO Act. On 01.6.2019, the petitioner-appellant was produced before the learned Special Judge, Imphal East and after hearing the petitioner and his counsel, the petitioner was sentenced to under to rigorous imprisonment for a period of 7 years and to pay fine of Rs.50,000/- under Section 10 of the POCSO Act and in default to undergo 6 months simple imprisonment. The learned Special Judge also ordered that the said fine amount if deposited, the same shall be given to the victim girl as compensation. That apart, the learned Special Judge also recommended for provision of victim compensation under Section 357A of Cr.P.C. to the victim. The learned Special Judge has also ordered the period which has already undergone by the petitioner-appellant in the judicial custody during the period of investigation as well as during the trial, if any, shall be set-off from the sentence awarded.

3. Aggrieved by the conviction and sentence imposed on the petitioner, the petitioner has filed Criminal Appeal No.25 of 2019 before this Court. Pending appeal, the petitioner has filed the present petition seeking to enlarge him on bail on medical grounds pending disposal of the appeal. According to the petitioner, he requires good medical care and attention for his ailment outside the jail and if he is released on bail, he will never jump the bail and he will abide by all the terms and conditions imposed by this Court.

4. The respondent State filed objection stating that the trial Court after appreciating the evidences produced by the prosecution as well as the defence side, convicted the petitioner and sentenced him to undergo 7 years rigorous imprisonment. It is stated that there is no immediate or urgent medical emergency that the petitioner-appellant is suffering from and his ailment, if any, can be taken care of by the medical staff of the jail.

5. The learned counsel for the petitioner submitted that the petitioner was on bail during trial and he had fully co-operated in the trial by putting his personal appearance in almost all the hearing dates fixed by the trial Court and he

never violated any terms and conditions of his releasing on bail during the whole proceedings of the trial. The learned counsel would submit that the petitioner is a diabetic patient and he requires constant medical care and attention for his ailment. Furthermore, his health condition has worsened day by day.

6. The learned counsel further submitted that detention of the petitioner during pendency of the appeal is a severe punishment to him and his family members and therefore prays for bail and that the petitioner undertakes to abide by the condition imposed by this Court in releasing him on bail during the pendency of the appeal.

7. Per contra, the learned counsel for the State submitted that in view of the gravity of the offence committed by the petitioner, he cannot be released on bail pending disposal of the appeal. He would submit that the petitioner, as a matter of right, cannot seek bail and several other similar factors need to be considered by the Court while granting bail pending disposal of the appeal. In the case on hand, if the Court considers the nature of offence, the petitioner is not entitled to get the bail pending disposal of the appeal.

8. The learned counsel for the respondent State further submitted that a bare perusal of the medical papers annexed with the bail application reveals that the medical papers are stale and irrelevant papers as the same are dated 2016 and that there is no life threatening medical ailment that the petitioner is stated to be suffering from. According to him, there is no immediate or urgent medical emergency that the petitioner is suffering from and thus prayed for dismissal of the petition.

9. This Court considered the submissions raised by both parties and also perused the materials available on record.

10. It appears that the petitioner was convicted under Section 10 of the POCSO Act and sentenced him to undergo 7 years of rigorous imprisonment and to pay fine of Rs.50,000/-, in default to undergo 6 months simple imprisonment. The judgment of the learned Special Judge is dated 29.5.2019 and sentence was imposed on 01.6.2019 and from 29.5.2019 onwards, the petitioner was in jail

11. Section 389 Cr.P.C. provides:

***“389. Suspension of sentence pending the appeal; release of appellant on bail - (1)***

*Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.*

*(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by convicted person to a court subordinate thereto.*

*(3) Where the convicted person satisfies the court by which he is convicted that he intends to present an appeal, the court shall, -*

*(i) Where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or*

*(ii) Where the offence of which such person has been convicted is a bailable one, and he is on bail, order that the convicted person be released on bail unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1), and the sentence of 'imprisonment shall, so long as he is so released on bail, be deemed to be suspended.*

*(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced."*

12. In State of **Maharashtra v. Madhukar Wamanrao Smarth**, reported in (2008) 5 SCC 721, the Hon'ble Supreme Court held:

*“10. The parameters to be observed by the High Court while dealing with an application for suspension of sentence and grant of bail have been highlighted by this Court in many cases. In Kishori Lal v. Rupa [(2004) 7 SCC 638 : 2004 SCC (Cri) 2021] it was observed as follows: (SCC p. 639, para 4)*

*“4. Section 389 of the Code deals with suspension of execution of sentence pending the appeal and release of the appellant on bail. There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is the requirement for the appellate court to record reasons in writing for ordering suspension of execution of the sentence or order appealed against. If he is in confinement, the said court can direct that he be released on bail or on his own bond. The requirement of recording reasons in writing clearly indicates that there has to*



*be careful consideration of the relevant aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine.”*

*The above position was reiterated in Vasant Tukaram Pawar v. State of Maharashtra [(2005) 5 SCC 281 : 2005 SCC (Cri) 1052].*

11. *It is true that the parameters to be applied in cases where life or death sentence is imposed, may not be applicable to other cases. But, the gravity of the offence, the sentence imposed and several other similar factors need to be considered by the court. The fact that the accused was on bail during trial is certainly not a relevant factor. This position has been fairly conceded by learned counsel for the respondents. The reasons indicated by the High Court for granting bail in our opinion do not satisfy the parameters. It needs to be pointed*

*out that the trial court considering the gravity of the offence has directed the sentences to run consecutively. This aspect has also not been considered by the High Court. In the circumstances, the impugned order in each case is indefensible and deserves to be set aside which we direct. But considering the fact that the High Court had not applied correct principles it would be proper for the High Court to reconsider the matter and for that purpose the matter is remitted to the High Court. Needless to say, the High Court shall consider all the relevant aspects and pass orders in accordance with law.*

13. In ***Gajraj Yadav v. Rajendra Singh @ Deena and others, reported in 2008 (7) Supreme 573***, the Hon'ble Supreme Court held:

*“13. The parameters governing Section 389 of the Code were highlighted in Kishori Lal v. Rupa [(2004) 7 SCC 638 : 2004 SCC (Cri) 2021], Vasant Tukaram Pawar v. State of Maharashtra [(2005) 5 SCC 281 :*

*2005 SCC (Cri) 1052] and Gomti v. Thakurdas [(2007) 11 SCC 160 : (2008) 1 SCC (Cri) 644] .*

*14. The High Court noted that except Girdhari other appellants (present respondents) were on bail during trial.*

*15. The order directing suspension of sentence and grant of bail is clearly unsustainable and is set aside. Learned counsel for the respondent-accused stated that fresh applications shall be moved before the High Court. In case it is done, it goes without saying, that the High Court shall consider the matter in the proper perspective in accordance with law.*

14. In ***Sunil Kumar v. Vipin Kumar and others, reported in (2014) 8 SCC 868***, the Hon'ble Supreme Court held:

*“13. We have heard the rival legal contentions raised by both the parties. We are of the opinion that the High Court has rightly applied its discretionary power under Section 389 CrPC to enlarge the respondents on bail. Firstly, both the*

*criminal appeal and criminal revision filed by both the parties are pending before the High Court which means that the convictions of the respondents are not confirmed by the appellate court. Secondly, it is an admitted fact that the respondents had been granted bail earlier and they did not misuse the liberty. Also, the respondents had conceded to the occurrence of the incident though with a different version.*

14. *We are of the opinion that the High Court has taken into consideration all the relevant facts including the fact that the chance of the appeal being heard in the near future is extremely remote, hence, the High Court has released the respondents on bail on the basis of sound legal reasoning. We do not wish to interfere with the decision of the High Court at this stage. The appeal is dismissed accordingly.*

15. **In Navjot Singh Sidhu v. State of Punjab and another, reported in (2007) 2 SCC 574**, the Hon'ble Supreme Court held:

*“4. Before proceeding further it may be seen whether there is any provision which may enable the Court to suspend the order of conviction as normally what is suspended is the execution of the sentence. Subsection (1) of Section 389 says that pending any appeal by a convicted person, the appellate court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond. This sub-section confers power not only to suspend the execution of sentence and to grant bail but also to suspend the operation of the order appealed against which means the order of conviction. This question has been examined in considerable detail by a three-Judge Bench of this Court in Rama Narang v. Ramesh Narang [(1995) 2 SCC 513] and Ahmadi, C.J., speaking for the Court, held as under (para 19 of the reports): (SCC p. 527)*

*“19. That takes us to the question whether the scope of Section 389(1) of the Code extends to conferring power on the appellate court to stay the operation of the order of conviction. As stated earlier, if the order of conviction is to result in some disqualification of the type mentioned in Section 267 of the Companies Act, we see no reason why we should give a narrow meaning to Section 389(1) of the Code to debar the court from granting an order to that effect in a fit case. The appeal under Section 374 is essentially against the order of conviction because the order of sentence is merely consequential thereto; albeit even the order of sentence can be independently challenged if it is harsh and disproportionate to the established guilt. Therefore, when an appeal is preferred under Section 374 of the Code the appeal is against both the conviction and*

*sentence and therefore, we see no reason to place a narrow interpretation on Section 389(1) of the Code not to extend it to an order of conviction, although that issue in the instant case recedes to the background because High Courts can exercise inherent jurisdiction under Section 482 of the Code if the power was not to be found in Section 389(1) of the Code. We are, therefore, of the opinion that the Division Bench of the High Court of Bombay was not right in holding that the Delhi High Court could not have exercised jurisdiction under Section 482 of the Code if it was confronted with a situation of there being no other provision in the Code for staying the operation of the order of conviction. In a fit case if the High Court feels satisfied that the order of conviction needs to be suspended or stayed so that the convicted person does not suffer from a certain disqualification*

*provided for in any other statute, it may exercise the power because otherwise the damage done cannot be undone; the disqualification incurred by Section 267 of the Companies Act and given effect to cannot be undone at a subsequent date if the conviction is set aside by the appellate court. But while granting a stay or suspension of the order of conviction the Court must examine the pros and cons and if it feels satisfied that a case is made out for grant of such an order, it may do so and in so doing it may, if it considers it appropriate, impose such conditions as are considered appropriate to protect the interest of the shareholders and the business of the company.”*

....

*6. The legal position is, therefore, clear that an appellate court can suspend or grant stay of order of conviction. But the person seeking stay of conviction should specifically draw the*



*attention of the appellate court to the consequences that may arise if the conviction is not stayed. Unless the attention of the court is drawn to the specific consequences that would follow on account of the conviction, the person convicted cannot obtain an order of stay of conviction. Further, grant of stay of conviction can be resorted to in rare cases depending upon the special facts of the case.*

16. In the instant case, the petitioner has filed the present petition seeking to enlarge him on bail pending disposal of the appeal on medical grounds. Therefore, now the point that arises for consideration is whether the petitioner is entitled to get bail pending disposal of the appeal on medical grounds.

17. Section 389 Cr.P.C. deals with suspension of execution of sentence pending the appeal and release of the appellant on bail. There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 Cr.P.C. is the requirement for the appellate Court to record reasons in writing for ordering suspension of

execution of the sentence or order appealed. If he is in confinement, the said Court can direct that he be released on bail or on his own bond. The requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant, aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine. In the case on hand, the petitioner has pleaded that he is a diabetic patient and he requires constant medical care and attention, which is not available in the jail. Though the respondent State contended that there is no immediate or urgent medical emergency that the petitioner is suffering from and his ailment, if any, can be taken care of by the medical staff of the jail, nothing has been produced by the respondent State to prove that there was no life threatening medical ailment and that the medical staff are giving good medical treatment to the petitioner. Though no recent medical records have been produced by the petitioner, since the factum of petitioner's ailment has not been denied by the respondent State, it would be appropriate to accept the plea of the petitioner that he requires constant medical care and attention.

18. In the instant case, the learned counsel for the petitioner has pointed out certain infirmities in the judgment impugned. In the grounds of appeal also, the petitioner has pointed out infirmities in the judgment of the learned Special Judge. According to the learned counsel for the petitioner-appellant, there are arguable points involved in the appeal.

19. Considering the given facts and circumstances of the case; taking note of the fact that there are arguable points involved in the appeal as contended by the learned counsel for the petitioner; the appeal is not likely to be taken up for final hearing in the near future; the petitioner was in jail for more than two years after conviction; the petitioner needs medical care and attention for his ailment and also the undertaking given by him that he will abide by the conditions imposed by this Court, this Court is satisfied in granting the relief of bail pending disposal of the appeal.

20. Accordingly, the petition is allowed and the petitioner is directed to be enlarged on bail on condition that he shall execute a bond for a sum of Rs.50,000/- (Rupees fifty Thousand only) with two sureties each for a like sum to the satisfaction of the learned Special Judge (POCSO), Imphal

East, Manipur, and, on further condition that the petitioner shall appear before the said Court on the first working day of every month at 10.30 A.M. without fail. The petitioner shall not leave the place of his residence without prior permission of the Trial Court and shall ordinarily reside at a place of his residence.

21. It is made clear that this Court granted bail pending disposal of the appeal purely on medical grounds and during the bail period, the petitioner shall not indulge in any criminal activities. If the petitioner indulges in any such criminal activities pending disposal of the appeal, the respondent State is at liberty to move an application for cancellation of bail. Both the petitioner and the respondent State are directed to cooperate for early disposal of the appeal.

**JUDGE**

**FR/NFR**

*Sushil*

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