THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

DIVISION BENCH: THE HON'BLE MR. JUSTICE A. MUHAMED MUSTAQUE, CHIEF JUSTICE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

I.A. No. 2 of 2026
in
Crl A. No. 21 of 2026

Dev Limboo,
Aged about 24 years,
Son of Shri Dilip Limboo,
Resident of Simpheng Darap,
District Gyalshing, Sikkim
At present: Sikkim State Jail

….. Applicant

versus

State of Sikkim ..... Respondent

Application for suspension of sentence and bil under section 430(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023

Appearance:

Mr. N. Rai, Senior Advocate (Legal Aid Counsel) with Ms Tara Devi Chettri, Advocate (Legal Aid Counsel) for the applicant.

Mr. S.K. Chettri, Additional Public Prosecutor for the State respondent

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Date of hearing : 28.10.2026
Date of order : 28.10.2026
Order uploaded on: 28.10.2026

ORDER

Bhaskar Raj Pradhan, J.

Mr. N. Rai, learned Senior Advocate for the applicant presses this application for suspension of sentence and bail under section 430(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023

(BNSS). He seeks suspension of sentence and bail for the appellant convicted for an offence under section 5(j)(ii) punishable under section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) who has been sentenced to undergo rigorous imprisonment for twenty years and to pay a fine of Rs.50,000/- and in default thereof to undergo further simple imprisonment for six months.

2. The learned Senior Counsel submits that the applicant was on bail during trial before his conviction but presently serving his sentence after the judgment dated 25.5.2026 rendered him guilty of the offence by the learned Special Judge.

3. The application states that the applicant and the victim were in a love relationship before the First Information Report (FIR) was lodged. They had had got married some time in 2023 and a baby boy was born to them thereafter. The FIR was lodged against the applicant by the victim's father after she along with the baby left the applicant due to some misunderstanding.

4. The learned Senior Counsel submits that the applicant has good grounds on the merits of the case and the prosecution have not been able to establish the case against him beyond reasonable doubt and therefore, the conviction is liable to be reconsidered by this Court.

5. The application was filed on 15.9.2026. Although, we had admitted the appeal on 29.9.2026 in the presence of the Learned Additional Prosecutor and directed this application be heard on the next date, the State respondent did not file a response. On 13.10.2026, we deemed it fit to grant another opportunity to the learned Additional Public Prosecutor for showing cause in writing against such release in terms of the proviso to section 430(1) of the BNSS, 2023 returnable on 27.10.2026. However, no response has been filed till date. We, therefore, proceed to hear the matter.

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

7. In matters concerning suspension of sentence and bail under Section 430 of the BNSS, we are required to consider whether the execution of the sentence should be suspended pending appeal; whether the convicted appellant should be released on bail; and whether the conditions are necessary to ensure the appellant’s appearance and compliance with the Court’s order.

8. The learned Special Judge has concluded that the appellant and the victim were in a love affair and they indulged in consensual sexual act several times and thereafter lived with the

parents of the appellant. The learned Special Judge has also concluded that they have a baby boy born to them on 23.01.2024.

9. It is pleaded on behalf of the appellant that he is 24 years of age and has not completed his studies and required to attend college to ensure that his attendance is sufficient to be able to appear in the examination for obtaining a bachelor's degree.

10. We notice that the learned Special Judge has sentenced the appellant for a fixed term of twenty years. It is settled law that if a sentence is for a fixed term, ordinarily, the appellate Court may exercise discretion to suspend the operation of the same liberally unless there are any exceptional circumstances.

11. The appeal is under consideration. The State respondent has not pointed out any exceptional circumstance emerging from the record to decline the suspension of sentence and grant of bail. The circumstances under which the offence is said to have been committed and the additional factor that the appellant desires to continue his education compels us to believe that it would be a better course for us to suspend the sentence and release the appellant on bail.

12. We, therefore, suspend the order on sentence dated 25.05.2026 and grant the appellant on the following terms and conditions:

(i) The appellant shall report to the Station House Officer of the jurisdictional Police Station once every fortnight till the disposal of the present appeal who shall keep a record and make it available to the Court.

(ii) The appellant shall furnish bail bond of Rs.10,000/- with two reliable sureties to the satisfaction of the learned Special Judge, one of whom shall be the father of the appellant who is present in Court today and willing to stand surety for his son.

13. I.A. No. 2 of 2026 is allowed and stands disposed of accordingly. Copy of this Order shall be forwarded to the learned Special Judge, POCSO, Gyalshing as well as the Jail Superintendent, Rongyek, Gangtok, both by email as well as in the usual course. A copy shall also be granted forthwith to the learned Counsel for the appellant to enable her to provide effective assistance to the appellant.

(Bhaskar Raj Pradhan)
Judge

(A. Muhamed Mustaque)
Chief Justice

Approved for reporting : **Yes/~~No~~**
Internet : **Yes/~~No~~**

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