



Serial No. 02
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 7 of 2024

Date of Decision: 12.06.2024

Shri. Thosterning Lyngdoh Nonglait,
S/o Shri. Phram Mawlong
R/o Maroit, Mairang Eastern West
District Meghalaya,
Meghalaya.

::::: **Petitioner**

-Vs-

1. The State of Meghalaya
Represented through Secretary
and Commissioner, Home Police
Department, Government of
Meghalaya.
2. The Superintendent of Police
Shillong, East Khasi Hills District,
Meghalaya.
3. Smti. Klisda Mukhim,
M/o xxxxxxxxxxxx
T/A Mawiong Umjapung
P/A Nongkhroh Village Nartiang
West Jaintia Hills District,
Meghalaya – 793151.

::::: **Respondents**

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge



Appearance:

For the Petitioner/Appellant(s) : Ms. S. Nongsiej, Adv.
 For the Respondent(s) : Mr. N.D. Chullai, AAG. with
 Mr. E.R. Chyne, GA. for R 1 & 2.
 None for R 3.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

JUDGMENT AND ORDER (ORAL)

1. Heard Ms. S. Nongsiej, learned counsel for the petitioner/accused, who has submitted that the petitioner/accused was arrested on 12.03.2023 on the strength of an FIR dated 12.03.2023 lodged by the respondent No. 3 on the allegation that her minor daughter was sexually assaulted by three persons, whereupon the police on receipt of such FIR had registered a case being Diengpasoh P.S. Case No. 01(03) 2023 under Section 5(g)/6 of the POCSO Act.

2. The learned counsel has submitted that affidavit of service as regard the issuance of notice upon the respondent No. 3 has been filed to indicate that the notice has been affectively issued, however, the respondent No. 3 has failed to appear before this Court today. Accordingly,



on prayer made, this matter shall proceed ex-parte against the respondent No. 3.

3. The Investigating Officer after investigation has been completed, has filed the charge sheet in June 2023 implicating the petitioner herein along with two other co-accused who are made to stand trial before the competent court of jurisdiction in Special (POCSO) Case No. 24 of 2023 pending before the Court of the learned Special Judge (POCSO), East Khasi Hills District, Shillong.

4. The learned counsel has however canvassed only one issue to impress upon this Court that the petitioner/accused may be enlarged on bail, such issue being that since the petitioner/accused was arrested more than one year ago, the case has not proceeded in accordance with the relevant provision of the POCSO Act, 2012, particularly Section 35 of the said Act, which stipulates inter alia, that the trial of the case should be completed within a period of one year, whereas in this instant case, charges have yet to be framed and there are as many as 32(thirty-two) prosecution witnesses to be examined, which in any case, would result in a prolonged trial, the petitioner/accused would then be deprived of his liberty to defend his case and even his right under Article 21 of the Constitution of India is



threatened by such prolonged incarceration. It is therefore prayed that this application may be allowed and the petitioner/accused may be enlarged on bail with any conditions that this Court would deem fit and proper to impose.

5. Mr. N.D. Chullai, learned AAG appearing on behalf of the State respondent Nos. 1 & 2 has however vehemently opposed the prayer made by leading this Court to the materials on record, particularly the statement of the survivor made under Section 161 Cr.P.C, wherein she has narrated the sequence of events leading to the sexual assault upon her, firstly, by one person and secondly, by the petitioner/accused herein, who has also threatened to kill her, if she reveals such incident.

6. The learned AAG has also submitted that the survivor being of tender age of about 15 years is traumatized by the incident and, if enlarged on bail, the presence of the petitioner/accused would endanger her life physically and mentally.

7. On the contention of the learned counsel for the petitioner as regard the delay in the proceedings which would automatically be the ground for grant of bail, the learned AAG has referred to the case of *State*



of Bihar & Anr v. Amit Kumar Alias Bachcha Rai reported in (2017) 13 SCC 751, wherein the Hon'ble Supreme Court at para 8 of the same has observed as follows:

“8. A bare reading of the order impugned discloses that the High Court has not given any reasoning while granting bail. In a mechanical way, the High Court granted bail more on the fact that the accused is already in custody for a long time. When the seriousness of the offence is such the mere fact that he was in jail for however long time should not be the concern of the courts. We are not able to appreciate such a casual approach while granting bail in a case which has the effect of undermining the trust of people in the integrity of the education system in the State of Bihar.”

8. The learned AAG has reiterated that the Hon'ble Supreme Court has clearly made a distinction as far as bail is concerned between the seriousness of the offence and the custody or rather a prolonged custody of the accused to say that when the seriousness of the offence is such, the mere fact that the accused was in jail for however long time should not be the concern of the courts.

9. The learned AAG has also referred to Section 35 of the POCSO Act which was laid stress upon by the learned counsel for the



petitioner/accused to say that sub-Section 2 of the same has mandated the Special Court to complete the trial within a period of one year, however, the word '*shall*' cannot be presumed to be understood that it should be mandatory, wherein in some cases before the Supreme Court, this term has also been understood to be used as obligatory. This being the case, it is the prayer of the learned AAG that this case is devoid of merits and the same is liable to be dismissed.

10. This Court has considered the submission made by the parties and would also reiterate that as far as the issue of bail is concerned, it is incumbent upon the court to consider, inter alia, the seriousness and the nature of the offence, more particularly, in cases of sexual assault against children or minors. Prima facie, it appears that the survivor was subjected to gang rape, the petitioner/accused being one of such perpetrators, it is a matter of evidence, and the appreciation of such evidence that the Trial Court would come to the conclusion as far as the trial is concerned, which in the opinion of this Court cannot be taken up in this instant application.

11. However, the Court is mindful of the nature and seriousness of the matter and under such circumstances, the petitioner/accused would have no ground to enable this Court to consider his prayer as far as bail is



concerned. As far as the provision of Section 35 of the POCSO Act is concerned, this Court, as has been pointed out by the learned counsel for the petitioner/accused in a number of cases, has referred to such provision to enlarge the accused on bail on the ground that the trial has not been able to be completed within a period of one year. It is to be noted that sub-Section 2 of Section 35 of the POCSO Act, would provide that “*the Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence*”. The expression ‘*as far as possible*’ has to be taken into account in a particular case, though, this Court is not privy to the proceedings before the Trial Court. At this point of time, it can be presumed that the trial has not proceeded before the Trial Court for the reasons best known to the learned Special Judge, POCSO. Under the circumstances, at this stage, this Court is not inclined to allow this application. However, while rejecting this application, this Court, would direct the Trial Court to immediately frame the charges and to examine the survivor at the earliest within a period of 3(three) weeks from today. After the deposition of the survivor is recorded, the petitioner/accused is at liberty to approach the Trial Court or this Court for fresh consideration of the prayer for bail.



12. In view of the above, this application is accordingly dismissed and stands disposed of. No costs.

13. Let copy of this order be issued upon the Trial Court for compliance.

Judge

Meghalaya
12.06.2024