

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 6 of 2023

		Date of Decision: 03.05.2023
Shri. Bankmih Nongrum	Vs.	State of Meghalaya & 2 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Mr. N.M. Mansuri, Adv.
For the Respondent(s)	:	Mr. H. Kharmih, Addl. PP. for R 1&2. Ms. P. Riahtam, Adv. 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. The petitioner has come before this Court with an application under Section 439 Cr.P.C with a prayer for grant of bail in connection with Laban P.S. Case No. 13 (02) of 2023 under Section 5(j)(ii)/6 of the POCSO Act.

2. Mr. N.M. Mansuri, learned counsel appearing on behalf of the petitioner has submitted that an FIR/Written Information dated 01.02.2023 was lodged by the respondent No. 3, informing the police that she is the mother of a minor girl aged about 15 years who on a complaint of

abdominal pain, she was taken to the Civil Hospital, Shillong for treatment, however after medical examination, it was found out that she was pregnant and the minor girl was then taken to Ganesh Das Hospital to undergo an abortion process since she is still a student. The informant has also stated that her minor daughter had informed her that her pregnancy was a result of a mistake she made with the petitioner herein.

3. On receipt of the said FIR, a police case was registered being Laban P.S. Case No. 13 (02) of 2023. On investigation being undertaken, the petitioner was arrested on 03.02.2023 and is still in custody till date.

4. The learned counsel has also submitted that the case should not have been registered under the said provisions of Section 5(j)(ii) & 6 of the POCSO Act as there was no element of sexual assault since the relationship between the petitioner and the alleged victim girl is one of consensual relationship and the physical sexual contact and intercourse was voluntary and therefore, there is no credence to the allegations made by the prosecution.

5. The learned counsel has also submitted that the respondent No. 3 herein has realized that the complaint that she made was not intended to cause the arrest of the petitioner, but that she has made the complaint only on being directed by the hospital authority. In this regard, the respondent No. 3 has also filed an affidavit annexed as Annexure-III to this application, stating that she had not filed any FIR against the accused

person and that she has no objection if the accused person is released on bail.

6. In the context of the offence said to be made out against the petitioner under the provisions of the POCSO Act, the learned counsel has submitted that in the facts and circumstances of the relationship between the petitioner and the alleged victim girl, the observation of the Hon'ble Allahabad High Court in the case of *Krishana v. State of U.P & 3 Ors: Criminal Misc. Bail Application No. 3124 of 2023*, the Court in its order dated 15.03.2023 at para 7 of the same has observed as follows:

“7. POCSO Act was formulated to protect children under the age of 18 years from sexual exploitation. Nowadays more often than not it has become a tool for their exploitation. The Act was never meant to criminalise consensual romantic relationships between adolescents. However, this has to be seen from the facts and circumstances of each case. The fact of consensual relationship borne out of love should be of consideration while granting bail because it would amount to perversity of justice if the statement of victim was ignored and accused was left to suffer behind jail.”

7. However, for the limited purpose of this application, the learned counsel has submitted that the petitioner is a young person and is earning his livelihood to support his family and as such, he may be released on bail with any conditions that this Court may deemed fit and proper to impose.

8. Mr. H. Kharmih, learned Addl. PP appearing on behalf of the State respondents No. 1 & 2 has submitted that the case diary as called for by this Court has been produced today and on perusal of the same, this

Court may pass necessary orders.

9. The submission of the parties have been duly noted by this Court and the contents of the application as well as the case diary have been thoroughly perused. The facts as stated above are reflected in the recordings found in the case diary and as such, there is no contradiction as far as the relationship between the petitioner and the minor daughter of the respondent No. 3/informant is concerned. In fact, in the statement recorded under Sections 161 as well as 164 Cr.P.C, the minor girl has narrated the sequence of events, particularly the many times that she had sexual intercourse with the petitioner which only goes to prove that the statement in the FIR is correct, though for the proper adjudication of the matter, evidence has to be recorded and appreciated accordingly.

10. Since the statement of the principal witnesses, that is, the minor girl, the informant/respondent No. 3 as well as that of the petitioner/accused have been recorded by the I/O who has also in his case diary indicated that he had visited the places of occurrence, therefore, it would appear that at this stage, considerable progress has been made as far as investigation is concerned.

11. On the issue of bail, this Court is led to the observations made by the Hon'ble Supreme Court in the case of *Satender Kumar Antil v. Central Bureau of Investigation & Anr: (2022) 10 SCC 51*, particularly at paragraphs 9, 10, 11, 12 & 13, wherein, inter alia, the concept of bail and

the rule of bail has been elaborately discussed and which would be profitable if the same is reproduced herein as under:

“9. The term “bail” has not been defined in the Code, though is used very often. A bail is nothing but a surety inclusive of a personal bond from the accused. It means the release of an accused person either by the orders of the court or by the police or by the investigating agency.

10. It is a set of pre-trial restrictions imposed on a suspect while enabling any interference in the judicial process. Thus, it is a conditional release on the solemn undertaking by the suspect that he would cooperate both with the investigation and the trial. The word “bail” has been defined in the Black’s Law Dictionary, 9th Edn., p. 160 as:

“A security such as cash or a bond; esp., security required by a court for the release of a prisoner who must appear in court at a future time.”

11. *Wharton’s Law Lexicon*, 14th Edn., p. 105 defines “bail” as:

“to set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and at a place certain, which security is called bail, because the party arrested or imprisoned is delivered into the hands of those who bind themselves or become bail for his due appearance when required, in order that he may be safely protected from prison, to which they have, if they fear his escape, etc., the legal power to deliver him.”

Bail is the rule

12. The principle that bail is the rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India. This court in *Nikesh Tarachand Shah v. Union of India*, (2018) 11 SCC 1, held that: (SCC pp. 22-23 & 27, paras 19 & 24)

“19. In *Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565, the purpose of granting bail is set out with great felicity as follows: (SCC pp. 586-88, paras 27-30)

‘27. It is not necessary to refer to decisions which deal

with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in *Nagendra Nath Chakravarti, In re, 1923 SCC OnLine Cal 318*, AIR pp. 479-80 that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the “Meerut Conspiracy cases” observations are to be found regarding the right to bail which deserve a special mention. In *K.N. Joglekar v. Emperor, 1931 SCC OnLine All 60*, it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there was no hard-and-fast rule and no inflexible principle governing the exercise of the discretion conferred by section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In *Emperor v. H.L. Hutchinson, 1931 SCC OnLine All 14*, AIR p. 358 it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

28. Coming nearer home, it was observed by Krishna Iyer, J., in *Gudikanti Narasimhulu v. Public Prosecutor*,

(1978) 1 SCC 240, that: (SCC p. 242, para 1)

“1. ... the issue [of bail] is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitised judicial process. ... After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of “procedure established by law”. The last four words of Article 21 are the life of that human right.’

29. In *Gurcharan Singh v. State (Delhi Admin.)* (1978) 1 SCC, it was observed by Goswami, J., who spoke for the Court, that: (SCC p. 129, para 29)

“29. ... There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail.”

30. In *American Jurisprudence* (2nd Edn., Vol. 8, p. 806, para 39), it is stated:

“Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end.”

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.’

13. Further this Court in *Sanjay Chandra v. CBI*, (2012) 1 SCC 40, has observed that: (SCC p. 52, paras 21-23)

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor

preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.”

12. Apart from what has been noted above, as regard the principles of bail, the Hon’ble Supreme Court has time and again in many of its judicial pronouncement has laid down broad parameters and factors which would govern or rather guide the grant or refusal of bail, pertinently, with reference to the fact and circumstances of a particular case. Some of the main consideration would be to look into the nature and gravity of the accusation, the antecedent of the accused, the possibility of the accused absconding or the fear of tampering with evidence and witnesses, et al.

13. In the light of the above, this Court is of the considered view that the petitioner has made out a case for grant of bail.

14. Accordingly, the accused is directed to be released on bail on the following conditions that:

- i) He shall not abscond or tamper with the evidence and witnesses;
- ii) He shall not have any contacts whatsoever with the minor girl in question till disposal of the case;
- iii) He shall appear before the Investigating Officer as and when required;
- iv) He shall not leave the jurisdiction of India without prior permission of the court; and
- v) He shall furnish a personal bond of ₹ 20,000/- (Rupees twenty thousand) only with two solvent sureties of like amount to the satisfaction of the concerned court.

15. Registry is directed to send back the case diary.

16. In view of the above, Bail Application is accordingly disposed of.

No. costs.

Judge

Meghalaya
03.05.2023
"D. Nary, PS"