

Serial No. 05
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 9 of 2023

		Date of Decision: 02.05.2023
Shri. Abdul Kalam Sk	Vs.	State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Dr. N. Mozika, Sr. Adv. with Mr. M.L. Nongpiur, Adv.
For the Respondent(s)	:	Mr. K.P. Bhattacharjee, GA. for R 1. None for R 2.

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 Dr. N. Mozika, learned Sr. counsel appearing on behalf of the petitioner as well as Mr. K.P. Bhattacharjee, learned GA appearing on behalf of the State respondent.

2. The learned Sr. counsel for the petitioner has submitted that the notice issued upon the respondent No. 2 who is the complainant as far as the FIR connected with this case is concerned, has been duly served and to this effect, affidavit of service has been filed. However, the respondent No. 2 has failed to appear before this Court. On submission made, this matter

will now proceed ex-parte against the said respondent No. 2.

3. As to the main issue in this petition, the learned Sr. counsel has submitted that the petitioner herein who is the father of the accused person namely Shri. Habibul Islam has approached this Court with a prayer for grant of bail in connection with Tura Women P.S. Case No. 41 (8) of 2020 under Section 366A/34 IPC read with Section 5(g)(i)/6 of POCSO Act, 2012 and which matter has culminated in a regular case being registered as Special (POCSO) Case No. 39 of 2020 pending before the Court of the learned Special Judge (POCSO) West Garo Hills, Tura.

4. The learned Sr. counsel has also submitted that in connection with the FIR upon which the said criminal proceedings has been registered, there were three accused persons including the accused son of the petitioner herein who were arrested in connection thereof and in due course, two of the accused persons namely, Mukabbir Hussain and Ishraful Hoque have since been enlarged on bail by this Court vide order dated 14.03.2023 in BA. No. 25 of 2022 and vide order dated 14.03.2023 in BA. No. 24 of 2022 respectively. Accordingly, since the facts and circumstances are the same, it is therefore, prayed that on the ground of parity, the accused son of the petitioner be also enlarged on bail in this case with any conditions to be imposed by this Court.

5. The learned GA has however maintained that the prosecution

would oppose the prayer for grant of bail, looking into the nature and gravity of the offence and also the fact that the case has proceeded to the stage of recording of evidence of the witnesses and as such, the accused son of the petitioner may not be enlarged on bail at this point of time since if released, he may abscond or may not cooperate with the trial of the case. There is also the issue of threat to the victim and her family members, further submits the learned GA.

6. On consideration of the submissions made by the parties, this Court is well reminded of the implications of an offence made under the relevant provisions of the POCSO Act, looking into the welfare and safety of the victim and also the fact that the culprit has to be brought before the Court to face trial where evidence would be recorded and duly appreciated by the Trial Court in due course. However, at this point of time, when the investigation has been duly completed and also the fact that the recording of evidence of the victim is still going on, it would not be prejudicial to the prosecution if the accused is released on bail.

7. The Court finds that it may not be proper if the accused is not given the liberty to defend his case properly, since under the same facts and circumstances, the co-accused has also been enlarged on bail and therefore, on the basis of parity, the balance would go in favour of the petitioner herein.

8. Accordingly, the prayer of the petitioner is allowed and the said accused son of the petitioner is hereby directed to be enlarged on bail on the following conditions that:

- i) He shall not abscond or tamper with the evidence and witnesses;
- ii) He shall not leave the jurisdiction of the State without prior permission of the Court concerned;
- iii) He shall be present as and when required by the Court and
- iv) He is to furnish a personal bond of ₹ 50,000/- (Rupees fifty thousand) only with two sureties of like amount to the satisfaction of the Trial Court.

9. The conditions even if fulfilled, however if there is evident of threat to the alleged victim or her family members by the accused herein named, the Trial Court is empowered to cancel the bail after hearing the parties.

10. In view of the above, this application is hereby disposed of. No costs.

Judge

Meghalaya
02.05.2023
"D. Nary, PS"