

**Serial No. 04**  
**Regular List**

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

AB No. 14 of 2023

Date of Decision: 28.08.2023

Shri. Living Dkhar

Vs.

State of Meghalaya & Anr.

**Coram:**

**Hon'ble Mr. Justice W. Diengdoh, Judge**

**Appearance:**

For the Petitioner/Appellant(s) : Mr. J. Shylla, Adv.

For the Respondent(s) : Mr. N.D. Chullai, AAG with  
Mr. E.R. Chyne, GA (For R 1)  
Mr. R.H. Alice (For R 2)

**JUDGMENT AND ORDER (ORAL)**

1. Heard Mr. J. Shylla, learned counsel for the petitioner who has submitted that this application for grant of pre-arrest bail is made on the ground that the petitioner herein is apprehending arrest in connection with Khliehriat Women P.S. Case No. 9(3) 2023 under Section 366 read with Sections 3(a)/4/5(1)/6 POCSO Act and has accordingly approached this Court seeking such relief. The learned counsel has also submitted that the facts of the case is that he has a relationship with the minor daughter of the complainant who is actually 16 years of age and in course of the relationship, there has been physical contact (sexual intercourse) about three times. The survivor was also staying with the petitioner for about two weeks or so

between the period where they had the said physical relationship. This prompted the complainant, who is the mother of the said survivor to lodge an FIR with the Officer-in-Charge, Khliehriat Women Police Station, East Jaintia Hills District and, accordingly a case being Khliehriat Women P.S. Case No. 9(3) 2023 under Section 366 read with Sections 3(a)/4/5(1)/6 POCSO Act was registered and investigation was launched. The I/O has in the meantime, noted the statement of the complainant, the alleged survivor and also the accused/petitioner.

2. According to the learned counsel for the petitioner, though he did not deny the fact that he had physical relationship with the alleged survivor, however, the same was by mutual consent and there was no force used whatsoever. Another allegation that the petitioner is already married at the relevant point is also refuted by him inasmuch as though it is admitted that he did had a relationship with the said person, it was not a marital relationship as such but only a fleeting relationship and the same has since ended. The learned counsel has also submitted that the fact that the petitioner is a young person, aged about 19 years, if arrested, his future will be jeopardized and under the circumstances, it is prayed that the prayer for grant of pre-arrest bail be allowed with any conditions to be imposed by this Court.

3. In support of his argument, the learned counsel has cited the case of *S. Varadarajan vs. State of Madras* reported in *AIR 1965 SC 942*, which in essence speaks of a case where Section 361 IPC would not be applicable even if it involves a minor girl who was allegedly taken away by an accused from the confines of her family and where the girl has the capacity to know what she was doing and had voluntarily joined the accused. In short, the allegation of kidnapping in such a situation would not hold.

4. The learned counsel has also cited the case of John Franklin Shylla v. State of Meghalaya & Anr. wherein this Court vide order dated 21.06.2023 in Crl.Petn. No. 3 of 2023 in a case of an allegation against the petitioner therein involving offences under the POCSO Act, has distinguished and interpreted the concept of sexual assault to say that if it involve voluntary action and consent, the strict meaning of the term '*assault*' would not apply in the context of the provisions of the POCSO Act, consent or voluntary nature of the act would be excluded from such purview.

5. In view of the above, it is prayed that this petition may be allowed.

6. Per contra, Mr. N.D. Chullai, learned AAG, appearing for the State respondent has, at the outset, submitted that the case diary is hereby produce before this Court. The learned AAG has firstly pointed out that the complainant in her complaint has clearly indicated that her minor daughter had revealed to her that she was staying with the petitioner at the relevant point of time and that she had had physical relationship with him three times in the past weeks. This, according to the complainant, would constitute an offence under the relevant laws.

7. The learned AAG has also submitted that the fact that there was sexual intercourse between the said minor girl and the petitioner is not denied by any of the party and that the petitioner at the relevant point of time was also a married person, he himself having admitted the same in his statement before the police would speak volumes of his intention vis-à-vis the said minor girl.

8. Stressing that the provisions of POCSO Act are very stringent and considering the seriousness of the matter, the learned AAG has submitted that

this petition may not be allowed at this stage.

9. This Court has given due consideration to the statement made. Facts as stated need not be reiterated suffice it to say that the case of the prosecution is that an offence under the relevant provision of the POCSO Act has been committed and the petitioner/accused person has to be brought to book. Prima facie it does appear that the relevant provisions of the POCSO Act are involved in the case herein and both the petitioner and the alleged survivor have not denied the same. However what lurks in the mind of this Court is the fact that whether such act would constitute sexual assault or penetrative sexual assault as the case may be under the circumstances. It would, however, be a matter of evidence for the same to be established.

10. At this point of time, keeping in mind the age of the petitioner and also the fact that the cardinal principle of bail and not jail is to be adhered to by courts quite in keeping with the tenets of bail jurisprudence. At this point of time, the Court is inclined to allow the prayer made in this petition. It is however, incumbent upon the petitioner to cooperate with the investigation and to abide by the conditions set in hereunder, violation of which would naturally entail cancellation of such bail.

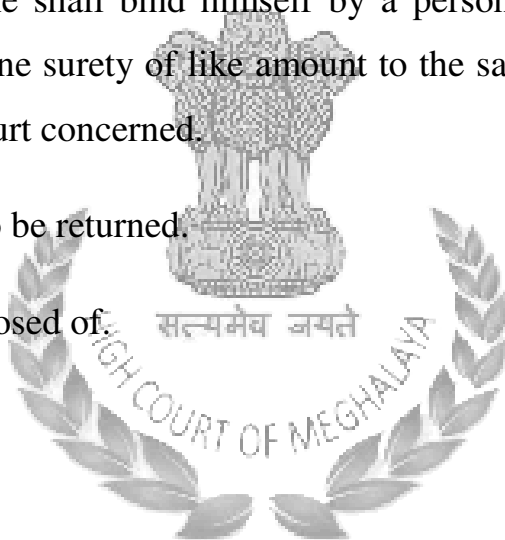
11. As regard the authorities cited by the petitioner in the case of S. Varadarajan (supra), the petitioner has stressed that at this point of time the same is not pressed for since the prosecution has also not pressed on the issue of kidnapping.

12. In view of the observations made hereinabove, in the event of his arrest, the petitioner is to be released on bail on the following conditions:

- i. That he shall not abscond and tamper with the evidence and

witnesses;

- ii. That he shall not leave the jurisdiction of India without prior permission from the I/O or the court concerned;
  - iii. That he shall not come into contact with the alleged survivor during pendency of the case;
  - iv. That he shall cooperate with the I/O or the court as and when required;
  - v. That he shall bind himself by a personal bond of ₹ 50,000/- with one surety of like amount to the satisfaction of the I/O or the court concerned.
13. Case diary to be returned.
14. Petition disposed of.



**Judge**

Meghalaya  
28.08.2023  
"Tiprilynti-PS"