

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 23 of 2023

	Date of Decision: 20.09.2023	
Shri. Balanstar Sawkmie	Vs.	State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Mr. S.D. Upadhaya, Adv. Mr. H. Yadav, Adv.
For the Respondent(s)	:	Mr. R. Gurung, GA. Mr. J. Thabah, GA. Ms. S. Shyam, GA. for R 1.

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

JUDGMENT (ORAL)

1. Heard Mr. S.D. Upadhaya, learned counsel for the applicant/accused.

2. Also heard Mr. R. Gurung, learned GA for the State respondent No. 1.

3. At the outset, the learned counsel for the applicant/accused has submitted that the notice issued upon the respondent No. 2 who is the complainant has been duly served and the same has been received by the

said respondent upon which, affidavit of service has been filed before this Court. It is also submitted that the date of receipt of the notice would show that it was on 02.09.2023. Since the respondent No. 2 has failed to appear before this Court inspite of the receipt of such notice, matter shall proceed ex-parte against the said respondent.

4. The learned counsel for the applicant/accused has maintained that the applicant/accused has denied the allegations made as far as the offence said to have been committed against the minor daughter of the respondent No. 2 is concerned, and having been incarcerated in custody for about one year and two months, it is the prayer of the learned counsel that the applicant/accused may be allowed to be enlarged on bail with any conditions as deemed fit and proper to be imposed by this Court.

5. The learned GA, has on the other hand submitted that the offence alleged is very grave and serious involving aggravated sexual assault upon the survivor, which fact has been brought out even in her deposition before the Trial Court as P.W. 1. It is therefore prayed that the prayer for grant of bail may not be allowed at this point of time.

6. This Court, on consideration of the submission made, would observe that the matter before the Trial Court has proceeded in its normal course and is now at the stage of recording of evidence. The materials on

record being annexed in the application would show that the deposition of the survivor has been recorded as P.W. 1. The applicant/accused is to defend his case before the Trial Court. At this juncture, this Court is of the considered opinion that for all practical purposes, further custody of the applicant/accused would not serve any useful purpose, inasmuch as, the investigation has been completed, charges has been framed and trial proceeded even to the extent that the survivor having deposed before the Court, it would be fair to allow the applicant/accused to defend his case meaningfully, for which he will not be able to do so while in custody. The offence being grave and serious, no doubt, but the fact remains that the applicant/accused is also entitled to answer such charges to the best of his ability.

7. The Hon'ble Supreme Court in the case of *Sanjay Chandra v. CBI: (2012) 1 SCC 40* at para 21 has observed that:

“21. In bail application, 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.”

8. Under such circumstances, the applicant/accused having been in custody for quite some time, this Court is inclined to allow the application made.

9. The accused/applicant Shri. Balanstar Sawkmie 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 contact whatsoever with the survivor till disposal of the case;
- iii) He shall not leave the jurisdiction of the State of Meghalaya without prior permission of the Trial Court;
- iv) He shall appear before the court as and when required and
- v) He shall bind himself on a personal bond of ₹ 30,000/- (Thirty thousand) only with one surety of like amount.

10. As indicated above, this application is accordingly disposed of.

No costs.

Judge

Meghalaya
20.09.2023
"D. Nary, PS"