

Serial No. 03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 29 of 2023

		Date of Decision: 12.09.2023
Smti. Saleha Khatun	Vs.	State of Meghalaya & 2 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Mr. K.C. Gautam, Adv. Ms. D.F. Mawrie, Adv.
For the Respondent(s)	:	Mr. H. Abraham, GA. Ms. S. Bhattacharjee, 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

ORDER (ORAL)

1. Heard Mr. K.C. Gautam, learned counsel for the petitioner who has submitted that the notice issued upon the respondent No. 3 who is the complainant has been duly affected and affidavit of service has been filed in this regard. However, the respondent No. 3 is not in attendance before

this Court today.

2. The main contention of the learned counsel as far as this matter is concerned is that on the basis of an FIR lodged by the respondent No. 3 before the Officer-in-Charge, Bajengdoba Police Station, North Garo Hills, Meghalaya on 02.12.2022, alleging commission of offence committed by the accused husband of the petitioner herein, such offence being punishable under the relevant provision of the POCSO Act, the FIR being taken note of, Women P.S. Case No. 22 (12) 2022 under Section 448 IPC read with Section 11(i)/12 of POCSO Act was registered.

3. On the matter being investigated into, the Investigating Officer had eventually filed the Final Report and the charge sheet, finding a prima facie case being well established against the accused therein and he was directed to stand trial.

4. The matter being taken cognizance of by the Court of the learned Special Judge (POCSO), North Garo Hills District, Resubelpara, a formal case being Special (POCSO) Case No. 3 of 2023 was registered. It is submitted that the stage of the case before the Trial Court is for consideration of charges.

5. The learned counsel has pointed out that the charge sheet was filed before the court on 27.01.2023 and as mandated by the provision of

Section 35 of the POCSO Act, 2012, the recording of evidence, particularly of the child in question or the survivor or the victim as the case may be, is supposed to be recorded within a period of 30(thirty) days from the date the Special POCSO Court has taken cognizance of the offence. This provision was evidently not yet complied with, inasmuch as, from the date the charge sheet was filed till date, about 10(ten) months have passed and on this ground alone, the learned counsel has submitted that the accused person is entitled to grant of bail.

6. The other aspect of the matter raised by the learned counsel is that the charge sheet having been filed, the process of investigation is completed, and therefore, there is no scope for any interference by the accused person with such process, if enlarged on bail. It is therefore prayed that this application may be allowed and the accused husband of the petitioner may be enlarged on bail with any conditions as deemed fit and proper to be imposed by this Court.

7. Mr. H. Abraham, learned GA appearing on behalf of the State respondents No. 1 & 2 has submitted the status report of the case before the Special POCSO Court, but what was presented before this Court is a copy of the charge sheet itself. Nothing has been indicated as to the stage of the case before the Trial Court.

8. Be that as it may, on the statement of the parties at the bar, this Court would assume that the matter is pending at the stage of consideration of charges before the Trial Court.

9. On perusal of the charge sheet and the allegations against the accused person herein, the alleged offence said to have been committed by the accused person mainly falls under Section 11(i)/12 of POCSO Act. The punishment for the same, if convicted, would be imprisonment for a period of three years. Evidently, the accused person is in custody for about 10(ten) months or so. It would be fair to allow the accused to defend his case at the Trial Court and the charge sheet having been filed, there is no apprehension of the accused tampering with the evidence or witnesses.

10. In the case of *Sanjay Chandra v. CBI: (2012) 1 SCC 40* at para 21, the Hon'ble Supreme Court 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.”

11. On consideration of the submission made by the learned counsels, this Court is inclined to allow this application and the accused person is accordingly directed to be released on bail on the following conditions that:

- i) He shall not abscond or tamper with the witnesses, inasmuch as, he is directed not to come into contact with the alleged survivors till disposal of the case before the Trial Court;
- ii) He shall cooperate with the trial, inasmuch as, he should appear before the court as and when the matter is fixed;
- iii) He shall not leave the jurisdiction of the State of Meghalaya without prior permission of the Trial Court;
- iv) He shall bind himself on a personal bond of ₹ 20,000/- (Rupees twenty thousand) only with one solvent surety of like amount and
- v) Failure to comply with the abovementioned conditions would allow the prosecution to move the Trial Court for an appropriate order for cancellation of the bail granted.

12. In view of the above, this application is accordingly disposed of.

Judge

Meghalaya
12.09.2023
"D. Nary, PS"

