

Serial No. 02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

AB No. 26 of 2023

Date of Decision: 28.09.2023

Shri. Mahin Mebanjop Sten Vs. State of Meghalaya & 3 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K.Ch. Gautam, Adv.

For the Respondent(s) : Ms. S. Shyam, GA (For R 1 & 2)
Mr. A. Momin, Adv. (For R 4)

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| 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. K.Ch. Gautam, learned counsel for the applicant who has submitted that the notice upon the respondent No. 4 has been duly affected. Mr. A. Momin, learned counsel, has entered appearance on behalf of the respondent No. 4.

2. This is an application under Section 438 Cr.P.C for grant of pre-arrest bail to the applicant herein who is apprehending arrest in connection

with Nongpoh Women P.S. Case No. 48(08)2023 under Section 3(a)/4/5(j)(ii)/6 POCSO Act. The learned counsel has then referred to the FIR lodged by the respondent No. 4 before the In-Charge, Umroi PIC, Ri-Bhoi District on 15.08.2023 informing him that her minor daughter is married to the applicant herein out of their own free will and that her daughter is pregnant for three months.

3. On the basis of the said information, a police case was registered as aforementioned and investigation was launched. In course of investigation, the statement of the survivor was recorded by the Investigating Officer. The learned counsel has also confirmed that the applicant and the survivor are now cohabiting together for the last few months as husband and wife and that the survivor is also confirmed to be pregnant. Under such circumstances, the learned counsel has submitted that since a criminal case has been registered implicating him as the accused, there is every possibility that he is likely to be arrested by the police at any point of time. Hence, this application.

4. The learned counsel has also submitted that the applicant does not have any previous police record nor is there any criminal case pending against him and if arrested, he shall suffer irreparable loss and injury. If enlarged on bail in the event of his arrest, the applicant is willing to undertake to abide by any terms and conditions which may be imposed by this Court. It is prayed that this application may be allowed.

5. The complainant speaking through her learned counsel, has submitted that she has no objection to the prayer made in this application. Similarly, Ms. S. Shyam, learned GA has submitted that in view of the fact

that the complainant has no objection to the application made and the case diary being duly produced before this Court, it is, therefore, left to the discretion of this Court to pass necessary order.

6. This Court on consideration of the submission made, would refer to the provision of Section 438 Cr.P.C wherein what has been stipulated therein is that any person who has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, may apply to the High Court or the Sessions Court for grant of bail in the event of his arrest. It is also stipulated in the provision that the Court upon such application would look into the nature and gravity of the accusation to the antecedent of the applicant and consider the possibility of the applicant fleeing from justice or in other words, the possibility of his absconding.

7. This Court has also perused the case diary and has come across the statement made by the survivor under Section 161 Cr.P.C which corroborates the submission made by the applicant that the relationship between the survivor and the petitioner is one of consensual in nature and that the sexual act which had taken place between them is based on mutual consent and was voluntary. Notwithstanding the fact that the survivor is below 18 years which in effect would make an act of consent without the sanction of law, the fact remains that there was no force or assault involved in the said act of the applicant, the matter though is subjected to evidence in due course.

8. This Court approaching the issue in a holistic manner would under the particular facts and circumstances of this case allow the prayer made as far as grant of pre-arrest bail is concerned.

9. Accordingly, the application is allowed. In the event of his arrest the applicant is directed to be released on bail on the following conditions:

- i. That he shall not abscond or tamper with the evidence and witnesses;
- ii. That he shall cooperate with the I/O as and when called for;
- iii. That he shall not leave the jurisdiction of the State of Meghalaya without prior permission from the I/O or the court concerned;
- iv. That he shall bind himself on a bond of ₹ 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the I/O or the court concerned.

10. The interim order passed by this Court vide order dated 22.08.2023 is hereby made absolute.

11. With the above, this application is hereby disposed of.

12. The copy of the case diary is returned to the GA.

Judge

Meghalaya
28.09.2023
"Tiprilynti-PS"