

Serial No. 06
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 35 of 2023

Date of Decision: 05.09.2023

Shri. Gaithailung R. Panmei Vs. State of Meghalaya & 2 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Thapa, Adv.

For the Respondent(s) : Mr. N. Syngkon, GA with
Ms. A. Thungwa, GA

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

ii) Whether approved for publication in press: Yes/No

JUDGMENT & ORDER (ORAL)

1. Heard Mr. S. Thapa, learned counsel for the petitioner. Also heard Mr. N. Syngkon, learned GA appearing for the State respondents.

2. From the records, including the case diary placed before this Court, what is noticed is that an FIR was lodged before the Officer-in-Charge, Umsning Police Station, Ri Bhoi District wherein the complainant therein has

alleged that she was sexually assaulted by the accused Shri. Taothing Panmei Dining. Accordingly, Women P.S. Case No. 32(5) 2023 under Sections 341/354/376/323 IPC was registered.

3. The accused in course of investigation was arrested and is now in judicial custody. The merits of the matter not being pursued at this point of time, the only ground raised by the petitioner is that he was in custody for more than 90 days within which time the charge sheet has not been filed in spite of the statutory and mandatory period of 90 days fixed for the same.

4. In fact, from the order of the learned Judicial Magistrate First Class, Ri Bhoi District, the I/O has presented the Final Report under Section 173, including the charge sheet on 30.08.2023, though the date which appears on the said report is 23.08.2023. The learned counsel has submitted that the fact that such charge sheet was acknowledged by the court on 30.08.2023, it can be presumed that the charge sheet was filed well after the statutory period of 90 days.

5. Mr. N. Syngkon, learned GA on his part has submitted that it is a fact that the charge sheet dated 23.08.2023 was presented before the court only on 30.08.2023 and the same was duly noted in the order passed by the said court of even date. This being the case, the learned GA has submitted that the charge sheet was accordingly filed after the statutory period is over.

6. This Court on consideration of the submission made, would firstly refer to the provision of Section 167 and the proviso to sub-section 2, the same which speaks of a situation where the Magistrate can authorized the detention of an accused person beyond the period of 15 days but such period

to not exceed 90 days or 60 days as the case may be and on the expiry of the said period of 90 or 60 days, the accused person shall be released on bail, if he is prepared to and does furnish bail.

7. While interpreting this provision, the Apex Court in the case of **Rakesh Kumar Paul v. State of Assam: (2017) 15 SCC 67** at para 71 has observed as follows:

“71. A bare reading of Section 167 of the Code clearly indicates that if the offence is punishable with death or life imprisonment or with a minimum sentence of 10 years, then Section 167(2)(a)(i) will apply and the accused can apply for “default bail” only if the investigating agency does not file charge-sheet within 90 days. However, in all cases where the minimum sentence is less than 10 years but the maximum sentence is not death or life imprisonment then Section 167(2)(a)(ii) will apply and the accused will be entitled to grant of “default bail” after 60 days in case charge-sheet is not filed.”

8. As to the relevancy of the date in which charge sheet is or was filed before the court as far as conclusion of the mandatory period of 90 or 60 days is concerned, the Hon’ble High Court of Orissa in the case of **Pramesh Pradhan and Anr. v. State of Orissa: 2022 SCC Online Ori 1160** at para 8 of the same has observed that *“...So irrespective of any date mentioned regarding preparation of the charge-sheet, the date of its submission before the Court is only relevant for the purpose of default bail under Section 167 (2) of the Cr.P.C...”*

9. This Court is in respectful agreement with the proposition of law by the Hon’ble Orissa High Court aforementioned and in the context of the case in hand, is convinced that the accused has made out a case for grant of default

bail.

10. Accordingly, the accused Shri. Taothing Panmei Dining is directed to be released on bail on the following conditions:-

- i) That he shall not abscond or tamper with the evidence or witnesses;
- ii) That he shall not have any personal contact or otherwise with the alleged victim;
- iii) That he shall not leave the jurisdiction of the State of Meghalaya except with the prior permission of the court concerned;
- iv) That he shall bind himself with a personal bond of ₹ 50,000/- (Rupees fifty thousand) only with one surety of like amount to the satisfaction of the Trial Court.

11. Case diary to be returned back.

12. With the above, this petition is accordingly disposed of. No costs.

Judge

Meghalaya
05.09.2023
"Tiprilynti-PS"