

Serial No. 03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 46 of 2023

Date of Decision: 17.10.2023

Smti. Manlang Nongkhlaw

Vs.

State of Meghalaya

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. D.K. Warjri, Adv.
Mr. R.S. Malngiang, Adv.

For the Respondent(s) : Mr. K. Khan, PP. with
Mr. S. Sengupta, Addl. PP.
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. D.K. Warjri, learned counsel for the petitioner as well as Mr. K. Khan, learned PP for the State respondent No. 1.

2. The respondent No. 2 who is the complainant herein has failed to appear before this Court inspite of receipt of notice, as such, matter shall proceed ex-parte against the said respondent.

3. The learned counsel for the petitioner has submitted that the

petitioner is the mother of the accused Shri. Raymon Nongkhlaw who was arrested on 25.05.2023 in connection with Ri-Bhoi Women P.S. Case No. 29 (05) 2023 under Section 354(A)(i)/376(1) of the Indian Penal Code read with Section 3(a)/4/7/8 POCSO Act, and is now in judicial custody, for which this application has been filed with a prayer for grant of bail to the accused person.

4. It is also submitted that in the meantime, the Investigating Officer had filed the charge sheet, and the matter has proceeded before the Trial Court being registered as G.R. Case No. 175/ 2023 under Section 354(A)(i)/376(1) IPC, 1860 read with Section 3(a)/4 POCSO Act, 2012.

5. The learned counsel also submits that the accused and the survivor were involved in a love relationship where they met twice in the month of December, 2022, however, it is the assertion of the learned counsel that no sexual encounter took place between the two and that the FIR was lodged by the mother of the survivor only on the assumption or supposition that her minor daughter has been sexually assaulted by the accused, thereby resulting in her being pregnant and that too, as on the date of filing of the FIR which is on 23.05.2023, the survivor was 5 weeks into her pregnancy. He further submits that the accused being a young person of about 19 years of age and is pursuing his studies, for which he

has to appear for his examination, therefore, he may be enlarged on bail to allow him to pursue his studies. It is the prayer of the learned counsel that the accused, if enlarged on bail, would undertake to abide by any conditions to be imposed by this Court.

6. Per contra, the learned PP has submitted that copy of the case diary is duly produced before this Court and has also led this Court to the deposition of the survivor made before the concerned authority under Section 164 Cr.P.C, which on perusal of the same, would clearly indicate that the survivor had given a lucid account of the incident which took place in the year 2023 and has narrated the facts to the extent that the accused, son of the petitioner have been named as the perpetrator of the sexual assault inflicted on her person. In such a situation, the learned PP has submitted that grant of bail may not be considered at this stage.

7. This Court has considered the submission made by the parties and has also perused the petition as well as copy of the case diary, which includes the charge sheet. According to the charge sheet, it is the opinion of the Investigating Officer upon completion of investigation that the case of sexual assault upon the survivor is not confined only to the accused, but to another person who have also been named in the charge sheet, and against both the accused, the Investigating Officer has recommended

further prosecution requiring them to face trial under the relevant provisions of the IPC as well as the POCSO Act respectively.

8. It is also the opinion of the Investigating Officer that the victim (sic survivor) is currently 16 months (sic 16 weeks) pregnant and that the DNA sample for paternity test will be done so only after delivery of the child since there are two alleged perpetrators involved.

9. Be that as it may, this Court, is conscious of the fact that this is a case involving a minor, who according to the report of the Investigating Officer, is stated to be 'little mentally unsound' and is also suffering from 'Major Depressive Disorder'. Given this condition, prima facie, it would appear that the survivor may have been taken advantage of by the accused, son of the petitioner and the other perpetrator. The seriousness of the offence cannot be overlooked and even, if this Court would consider the off repeated principle of bail jurisprudence, as far as grant of bail is concerned, that bail is the rule and jail is an exception, it is apparent that the gravity and seriousness of the nature of the offence has to be taken into account. Under the circumstances, at this point of time, this Court is not inclined to allow the prayer made by the petitioner. The petition is accordingly dismissed as devoid of merit.

10. In view of the above, this petition is accordingly disposed of.

No costs.

11. Registry is directed to return back the case diary to the learned
PP.

Judge

Meghalaya
17.10.2023
"D. Nary, PS"

