

Serial No. 02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 47 of 2023

Date of Decision: 05.10.2023

Shri. Pyndaplang Jalong Vs. State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Ms. P. Chettri, Adv.
For the Respondent(s) : Mr. K.P. Bhattacharjee, GA.
Ms. S. Shyam, GA. for R 1 & 2.
Respondent No. 3 in person.

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

JUDGMENT (ORAL)

1. Heard Ms. P. Chettri, learned counsel for the petitioner as well as Mr. K.P. Bhattacharjee, learned GA for the State respondents No. 1 & 2.
2. The learned GA has submitted that the case diary along with the status report of the case filed by the Investigating Officer is produced before this Court today.
3. The learned counsel for the petitioner has submitted that the accused person was arrested in connection with Mawlai P.S. Case No. 67

(7) 2023 under Section 5(j)(ii)(1)/6 of the POCSO Act, 2012.

4. On the basis of the information received by the police filed in the form of an FIR by the survivor herself, it is stated that she had an intimate relationship with the accused person since the month of October, 2021 and in course of their relationship, she had become physically intimated with him a number of times to the extent that in the month of April, 2023, she became pregnant. The accused person has advised her to abort the child, to which the survivor had refused and as such, the said FIR was filed.

5. The matter on being reported, has been registered as Mawlai P.S. Case No. 67 (7) 2023 and investigation was launched. In course of investigation, the statement of the survivor was noted down both under Sections 161 and 164 Cr.P.C. In both her statement, the survivor had given an account of what has transpired between her and the accused as has been stated in the FIR.

6. The accused being in custody for more than 70 days or so has then approached this Court with this instant application seeking grant of bail with the undertaking that he will abide by any conditions put forth by this Court.

7. The learned counsel for the petitioner has also submitted that the survivor/complainant was also made a party herein as respondent No. 3 and

on receipt of notice, she had personally appeared before this Court and has submitted that she has no objection to the prayer made in this application.

8. The learned GA, on the other hand, has submitted that this is a case involving a minor and the offences under the relevant provisions of the POCSO Act are serious in nature which includes aggravated sexual assault. It is therefore prayed that the prayer made in this application may not be allowed.

9. This Court upon consideration of the submission made and on perusal of the materials on record and the case diary, would agree that prima facie, the allegations made in the FIR may be correct to a certain extent, though the same has to be proved by way of evidence, however, considering the fact that this is a case the essence of which speaks of the relationship between the accused and the survivor being consensual in nature, it appears that the evidence required to be collected has already been done so by the Investigating Officer.

10. At this point of time, nothing remains, except for the matter to proceed for trial in due course. Keeping the accused in custody may not be necessary at this point of time since it is well settled in bail jurisprudence that bail is the rule and jail is the exception. The attending facts and circumstances in this case would reveal that there is no animosity between

the accused and the survivor and as such, to allow the accused to be enlarged on bail at this juncture may under the circumstances be appropriate. It is also well settled that more often than not, it is not advisable for an Under Trial Prisoner to be incarcerated in custody, if there is no apprehension as far as his antecedent and bonafide is concerned to the extent that the only concern would be that he may abscond and may not face trial. Even in this respect, adequate conditions are usually imposed to ensure that the accused faced trial.

11. In this view of the matter, this Court is inclined to allow the accused to be enlarged on bail which is done so accordingly. However, the accused is to abide by the following conditions, violation of which would allow the prosecution to take necessary steps for cancellation of the bail.

12. The conditions are as follows:

- i) That he shall not abscond or tamper with the evidence and witnesses;
- ii) That he shall have no physical contact or otherwise with the survivor, except, if required by law till the disposal of the case;
- iii) That he shall not leave the jurisdiction of the State of Meghalaya, except, if so allowed by the Investigating

Officer or the court concerned.

- iv) That he shall bind himself on a personal bond of ₹ 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the court concerned and
- v) That he shall appear before the Investigating Officer or the court concerned as and when required.

13. The case diary produced before this Court is hereby returned to the learned GA.

14. In view of the above, BA. No. 47 of 2023 is accordingly disposed of. No costs.



Judge

Meghalaya
05.10.2023
"D. Nary, PS"