

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

AB. No. 53 of 2023

		Date of Decision: 18.10.2023
Shri. Tapseng N. Marak	Vs.	State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Mr. S.A. Sheikh, Adv.
For the Respondent(s)	:	Mr. R. Gurung, GA. Mr. J. Thabah, GA.

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. S.A. Sheikh, learned counsel for the petitioner as well as Mr. R. Gurung, learned GA for the State respondents.
2. The learned GA has submitted that the case diary as called for is produced before this Court today and has also led this Court to the relevant portion of the case diary containing the statement of the survivor recorded under Section 161 Cr.P.C as well as her statement made before

the medical officer at the time of her medical examination. It is, however, submitted that the statement under Section 164 Cr.P.C which was due to be recorded on 16.10.2023 could not be done so in view of the fact that the survivor is in an advanced stage of pregnancy.

3. The learned GA further submits that from the narrative found in the statement of the survivor under Section 161 as well as before the said medical officer which are identical, what could be seen is that the survivor has depicted the facts of the case, particularly the incident, wherewith, she was allegedly sexually assaulted and raped by one of the co-accused and also at one point of time by the said co-accused along with the petitioner herein and another co-accused who is already in custody at this point of time.

4. Given the seriousness of the offence, the learned GA has submitted that it is imperative for the petitioner to be questioned personally by the Investigating Officer and to undergo whatever test or examination that is necessary to prove or disprove his involvement in the incident. Therefore, at this point of time, the prayer made in this petition is strongly objected to by the learned GA.

5. The learned counsel for the petitioner, in reply, has candidly

admitted that the petitioner was present on the date when the alleged incident took place, as the same happened at his residence. He also submits that the petitioner was never involved in any form of sexual assault upon the survivor. Another submission made by the learned counsel is that the petitioner is a young person who is pursuing his studies and is due to appear for his examination. In such circumstances, the learned counsel prays that the petitioner may be allowed to be enlarged on anticipatory bail with any conditions to be imposed upon him, to which he will abide by the same.

6. This Court on consideration of the submission made and on perusal of the petition as well as the case diary, is prima facie convinced that the incident as has been narrated by the survivor had actually taken place. As to how and in what manner such incident had taken place and also as to who is actually involved in the perpetration of such an offence, is a matter of evidence. However, this Court cannot lose sight of the fact that the survivor had painted a very lucid picture of what has actually happened to her, and at this point of time, the involvement of the petitioner along with the other two co-accused cannot be ruled out. In such a circumstance, the petitioner ought to allow himself to be

questioned so as to dispel any doubt, if any, as far as his involvement is concerned. Accordingly, this Court is of the opinion that the prayer for grant of anticipatory bail at this stage is not justified, the same is rejected.

7. The petitioner is directed to produce himself before the Investigating Officer for necessary action, if the Investigating Officer is of the opinion that he is required to be taken into custody, so be it.

8. In view of the above, this petition is accordingly dismissed and stands disposed of.

9. The case diary submitted before this Court is hereby returned to the learned GA.



Judge

Meghalaya
18.10.2023
"D. Nary, PS"