

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 25 of 2022

Date of Decision: 14.03.2023

Shri. Zakir Hussain Vs. State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Dr. N. Mozika, Sr. Adv. with
Mr. M.L. Nongpiur, Adv.
For the Respondent(s) : Mr. K.P. Bhattacharjee, GA. for R 1.
None for R 2.

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

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

JUDGMENT AND ORDER (ORAL)

1. Heard Dr. N. Mozika, learned Sr. counsel for the petitioner who has submitted that the petitioner is the father of the accused person named Mukabbir Hussain who was arrested in connection with Tura Women P.S. Case No. 41(8) of 2020 under Section 366A/34 IPC read with Section 5(g)(i)/6 of the POCSO Act, 2012.

2. The case has travelled to the point of being taken cognizance of by the learned Special Judge (POCSO) and thereafter, a regular case being

Special (POCSO) Case No. 39 of 2020 under the relevant sections have been registered and is now proceeding for trial before the Court of the learned Special Judge (POCSO), West Garo Hills, Tura. It is also the submission of the learned Sr. counsel that the accused who was arrested in connection with the aforesaid case is still in judicial custody till date for a period of about 2 ½ years or so.

3. The investigation of the matter being completed and now that the evidence is being recorded before the Court, there is no apprehension of the accused tampering with the evidence of the witnesses at this point of time and as to the apprehension that the accused may abscond or threaten the witnesses or the alleged victim, the learned Sr. counsel submits that if required and as part of the conditions to be imposed by this Court, the accused will undertake to abide by such conditions laid down as regard the apprehension of threat or abscondence. The learned Sr. counsel therefore prays that this Court may be pleased to enlarge the accused on bail with any conditions as deemed fit and proper.

4. Mr. K.P. Bhattacharjee, learned GA appearing on behalf of the State respondent No. 1 has opposed the submission made and has submitted that firstly, the case is serious in nature and the fact that the victim has not yet completed her deposition before the Court, if the accused is enlarged on bail, there is every possibility that he may threaten her. To this effect, the learned GA has brought to the notice of this Court the observation made by the Trial

Court in its order dated 23.01.2023, whereby when the alleged victim was cross-examined on that day and in course of proceedings, she has apprised the Court of a possible threat against her and her family made by the family members of the accused person to the extent that protection was sought for from the Court concerned. It is, on this premise that the learned GA has submitted that if enlarged on bail, there is every possibility of the accused threatening the victim and her family members.

5. This Court has given due consideration to the submission made and is mindful of the fact that the principle of criminal jurisprudence is that an accused is deemed innocent until proven guilty and the prosecution must prove that the accused is guilty beyond reasonable doubt. The accused person cannot be made to undergo detention in judicial custody or otherwise without any valid reason, but should be allowed to prepare his defence in a proper fashion. However, it is also a fact that mitigating factors has also to be taken into account while considering the issue of grant or refusal of bail, the seriousness and gravity of the alleged offence is one of them. The fact that the accused, if, enlarged on bail may abscond is another factor and also the fact that if, enlarged on bail, the accused may threaten the witnesses deserves the attention of the Court.

6. On the issue of threat being directed against the alleged victim and her family members by the family members of the accused person, the same has not been substantiated, in any case, if there is such a threat, the law will

take its own course with due procedure to be followed, for which necessary steps will be taken by the authorities concerned.

7. This Court, as pointed out by the learned Sr. counsel in an earlier order dated 22.04.2022, while considering the prayer for grant of bail on behalf of the accused person herein has observed that the accused may approach this Court, if there is any considerable delay in the proceedings before the Trial Court. On this aspect, submission has been made at the bar that out of twenty four prosecution witnesses, fourteen of them have been examined and ten remains. However, it is also submitted that during the year 2022, only two witnesses have been examined. Though this Court cannot enter into any speculation as to when the trial will finally be concluded, the fact remain that the trial may continue for another three or four months or even more than that.

8. Bail being a question of discretion, at this stage, this Court is of the considered opinion that the accused may be enlarged on bail, however as submitted, with stringent conditions.

9. This application is accordingly allowed. The accused is hereby directed to be enlarged on bail with the following conditions that:

- i) He shall not abscond or tamper with the evidence;
- ii) He shall not leave the jurisdiction of the State without prior permission of the Court concerned;
- iii) He shall be present as and when required by the Court and

iv) He is directed to furnish a personal bond of ₹ 50,000/-
(Rupees fifty thousand) only along with two sureties of like
amount to the satisfaction of the Trial Court.

10. As pointed out above, in the event of any hint of threat issued to the
alleged victim or any of her family members, the bail granted shall stand
automatically cancelled. It is also made clear that there should be no contact
at all between the accused and the alleged victim during the pendency of the
case.

11. In view of the above, bail application is accordingly disposed of. No
costs.



Judge

Meghalaya
14.03.2023
"D. Nary, PS"