

Serial No. 04
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 26 of 2022

Date of Decision: 13.02.2023

Royalish A. Sangma Vs. State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. P.K. Borah, Adv.

For the Respondent(s) : Mr. R. Gurung, GA (For R 1)
None for R 2

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

ORDER (O R A L)

1. This is an application with a prayer for grant of bail filed under Section 439 Cr.P.C. in respect of the accused Shri. Rosindro A. Marak, the husband of the petitioner herein.

2. Heard Mr. P.K. Borah, learned counsel for the petitioner who has submitted that the petitioner's husband was arrested on 27.07.2022 being accused of having committed an offence under Section 5(1)(m)(n)/6 of the

POCSO Act, 2012 in connection with Mawsynram P.S. Case No. 18(07)2022.

3. The learned counsel has submitted that the accused was arrested in connection with the abovementioned case on the basis of an FIR lodged by the daughter of his estranged wife and is apparently filed with an ulterior motive to wreck vengeance on the accused.

4. The learned counsel has again submitted that an application for grant of bail was moved on behalf of the accused person before the learned Trial Court but the same was rejected vide order dated 08.09.2022 on the ground that the accused being a family member of the victim, there is an apprehension that the accused might influence the victim and the witnesses. However, this fact was refuted by the petitioner who has submitted that the victim is not a family member of the accused person and that they are not staying together in the same homestead, since the accused person is staying very far away from the place of residence of the victim.

5. It is also the case of the petitioner that the charge sheet has been filed in the said case by the Investigating Officer (I/O) who has come to the conclusion that a *prima facie* case under Section 5(1)(m)(n)/6 of the POCSO Act is found well established against the accused person and he is sent up to face trial before the competent court of law.

6. The learned counsel for the petitioner has submitted that a perusal of the charge sheet filed would show that the complainant has stated that she has left her children, including the victim girl to stay with the accused person, when actually the said children including the victim girl used to stay separately with the complainant's mother and also with their mother and had only occasionally stayed at the homestead of the petitioner and her husband/accused person.

7. There is also reference to suppression of facts by the complainant as to the event or incident which happened at Mumbai when, at the time the victim girl was staying with her mother at Mumbai and on medical examination, the doctor's finding that "peno vaginal penetration cannot be ruled out" could have happened at Mumbai and not at the alleged place of occurrence.

8. The learned counsel has submitted that the accused person may be allowed to be enlarged on bail having been in custody for 7 months and there is no question of tampering with the evidence or witnesses since the charge sheet has been filed. In this regard, an undertaking will also be furnished by the accused person that he will not go anywhere near the residence of the alleged victim girl in course of the trial. Therefore, it is prayed that this application may be allowed and that the accused person

may be enlarged on bail on any conditions that this Court may deem fit to impose.

9. Mr. R. Gurung, learned GA, appearing for the State respondent has submitted that the case record related to the aforementioned criminal case is produced before the Court today and that the Court on perusal of the same may pass necessary orders in this regard.

10. This Court has considered the submission made on behalf of the petitioner and has also perused the contents of the petition herein as also the case record.

11. At the outset, it may be pointed out that the complainant had received notice of this matter, but has failed to enter appearance when called upon.

12. From the records, it is seen that an FIR was lodged before the Officer-in-Charge, Rynjah P.S., Shillong on 19.07.2022 by the complainant therein informing the police that her minor daughter was sexually assaulted by the accused person since she was 8 years old in the year 2015 which went on till she was about 12 years old in 2019. The complainant in her statement has narrated that she is working at Mumbai since the year 2009 and she had left her 3 children with her mother and her step-father (the accused person herein) and that she would visit her children only occasionally. In the year 2019, she came to Shillong to visit her children

and found that the victim girl was acting very strange and sullen. Thereafter, she took her daughter with her to Mumbai in 2020 and came back to Shillong in 2021. It was only in April 2022 that her daughter was able to open up to her and has eventually narrated whatever had happened to her, clearly depicting the alleged sexual assault perpetrated on her by the accused person who is the victim's grandfather.

13. The victim girl in her examination under Section 161 as well as under Section 164 is consistent in her narration of the incident and has clearly cited details about how the accused person had sexually assaulted her for a number of years.

14. On the basis of the evidence available on record, this Court is of the opinion that a *prima facie* case can be made out against the accused person, subject to evidence at the time of the trial and being a serious and heinous offence, involving a child whose innocence has been tarnished, unless proven to the contrary, the complicity of the accused person in the case cannot be ruled out at this juncture.

15. It is also well settled in bail jurisprudence that consideration for grant of bail has to be looked in the backdrop of certain factors, nature and gravity of the offence being one of them and accordingly on this ground alone, this Court is not inclined to allow the prayer of the petitioner herein.

16. This petition is accordingly dismissed as devoid of merits.

17. The Registry is to send back the case record.
18. Before parting, the learned Special Judge (POCSO), Shillong, dealing with the case in hand is requested to expedite the trial as is incumbent on the same, in view of the provisions of the POCSO Act.

Judge

Meghalaya
13.02.2023
"Tiprilynti-PS"

