

Serial No. 02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 27 of 2022

Date of Decision: 20.02.2023

Shri. Pynshailang Mawlong Vs. State of Meghalaya & 3 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Mr. S.R. Lyngdoh, Adv.
For the Respondent(s)	:	Mr. R. Gurung, GA. for R 1-3.
		None for R 4.

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 Mr. S.R. Lyngdoh, learned counsel for the petitioner who has submitted that the petitioner has been impleaded as an accused in connection with Special (POCSO) Case No. 50 of 2022 pending before the Court of the learned Special Judge (POCSO) at Shillong.

2. The allegation against the petitioner/accused has been set out in the charge sheet filed, for which charges have been framed against the petitioner/accused on 21.12.2021 under Section 354/354(A)/354(B)/375

Sixthly/376(2)(f)(j)/376(3) of IPC and under Section 7/9(n)/10 of the POCSO Act.

3. Facts apart, the matter has proceeded for trial before the said Court and the learned counsel for the petitioner/accused has submitted that as on date, four witnesses have been examined including the alleged victim. What remains is only the Doctor and the I/O to be examined. The learned counsel further submits that the petitioner/accused was arrested on 04.05.2020 and has since been languishing in jail for about 2 years and 9 months, as such he prays that this Court may be pleased to enlarge him on bail on conditions as deemed fit and proper.

4. Mr. R. Gurung, learned GA appearing on behalf of the State respondents No. 1-3 has submitted that the States concerned is that the evidence of the material witnesses, particularly the victim is yet to be completed and apprehension that if enlarged on bail, the petitioner/accused may threaten or tamper with the said witnesses. However, in view of the fact that the evidence of the witnesses, particularly the victim has been duly recorded by the Trial Court, there is no strong objection against the prayer made therein.

5. In the case of ***Bhadresh Bipinbhai Sheth v. State of Gujarat: (2016) 1 SCC 152***, at paragraphs 22, 25.3 & 26, the Court has, inter alia held that the object of bail is to secure the attendance of the accused at the trial and bail should not be withheld as a punishment. The Court has also to consider

whether there is any possibility of the accused tampering with the evidence or influencing witnesses etc. Another factor to be considered is when the accused has joined the investigation and he is fully cooperating with the investigating agency, in that event, custodial interrogation is to be avoided.

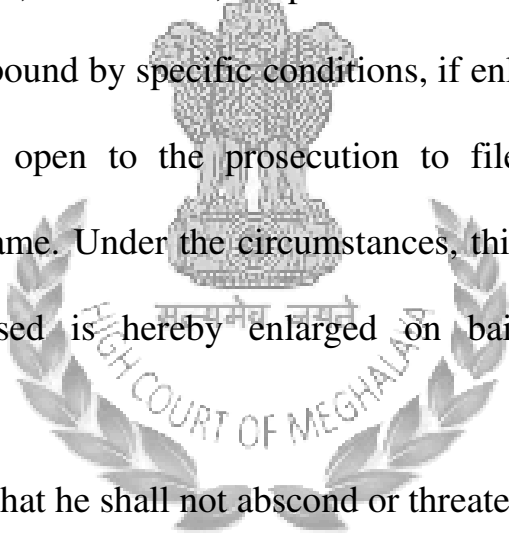
6. It is also seen that in the case of *Sanjay Chandra v. CBI: (2012) 1 SCC 40* at paragraphs 21, 22 & 23, the Hon'ble Supreme Court has observed that:

“21. In bail application, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.”

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.”

7. On consideration of the submission made by the parties and taking into account the observations made by the Apex Court in the case cited above, bereft of unnecessary details, the fact that the petitioner/accused has been in judicial custody for a considerable period of time and also the fact that bail jurisprudence dictates that bail is the rule and jail is the exception and the fact that most of the important witnesses have been examined in this case, there is no scope for the petitioner/accused in tampering with the evidence of the witnesses. In any case, if and when, the presence of the petitioner/accused is required, he can be bound by specific conditions, if enlarged on bail, failing which it would be open to the prosecution to file an application for cancellation of the same. Under the circumstances, this petition is allowed. The petitioner/accused is hereby enlarged on bail on the following conditions:

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- i) That he shall not abscond or threaten the witnesses;
 - ii) That he shall appear before the Court as and when required;
 - iii) That he shall not leave the jurisdiction of the State, and if so required, due permission has to be applied before the Trial Court;
 - iv) That he shall execute a personal bond of ₹ 50,000/- (Rupees fifty thousand) only with two sureties of like amount.

8. As indicated above, violation of any of these conditions would render the bail liable to be cancelled.

9. Bail application stands disposed of.

Judge

Meghalaya
20.02.2023
"D. Nary, PS"

