

GAHC020002652023



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL
PRADESH)
KOHIMA BENCH**

Case No. : Bail Appln./9/2023

MS. MUGHATOLI SWU
D/O LATE HEXUTO SWU, R/O H.NO. 502,
BLOCK V, CHEKIYE VILLAGE, DIMAPUR, NAGALAND

VERSUS

THE STATE OF NAGALAND
KOHIMA NAGALAND

Advocate for the Petitioner : N. MOZHUI

Advocate for the Respondent : P.P, NAGALAND

**BEFORE
HONBLE MR JUSTICE KARDAK ETE**

ORDER

Date : 30-06-2023

Heard Mr. N. Mozhui, learned counsel for the applicant and Mr. K. Angami, learned Public Prosecutor for the State.

2. This is an application under Section 439 of Code of Criminal Procedure, 1973 filed by one Smti. Mughatoli Swu, praying for grant of bail to the accused Shri Tova Sema in connection with Cyber Crime P.S. Case No. 3/2023 under Section 14 of POCSO Act, read with 66(B) IT Act.

3. The accused Shri Tova Sema was arrested on 18.05.2023 at around 6:00 PM by the Cyber Crime Police pursuant to the Suo Moto

complaint dated 18.05.2023 that the Swedish authorities had identified a possible child sex offender located at Nagaland. It is also alleged that the alleged accused is active in several groups where Child Sexual Abuse Materials (CSAM) are being shared and discussed on Wickr platform. Since then, the accused is in jail.

4. Mr. N. Mozhui, learned counsel for the applicant submits that the accused is nowhere connected with the commission of offence as he has never indulged in any child sexual abuse nor shared or discussed in the Wickr platform with regard to the child sexual abuse of the 17 month old child of the Swedish National. He submits that the accused has never uploaded or shared any obscene material in the Wickr platform of the 17 month old girl child of Swedish National for the fact that the picture of the girl child was shared by the mother of the child of the Swedish National in the Wickr platform. He further submits that the accused is a family man having a minor daughter aged about 2 years 6 months and a 3 months old son, as such, there is no possibility of the accused involving in uploading or sharing of the obscene material of 17 month old child of Swedish National on the said platform as he too is a father having minor daughter and son. He further submits that no further custodial interrogation is required as he has been in jail for more than a month. He further submits that there is no evidence against the alleged accused, whatever statement the accused has given was under duress exerted by the Investigating Agency. Therefore, the learned counsel for the applicant submits that considering the facts submitted above the accused may be released on bail on any terms and conditions that may be imposed by this Hon'ble Court which shall be abided by the accused.

5. Mr. K. Angami, learned Public Prosecutor for the State of Nagaland while referring to the Case Diary submits that there are enough materials which points towards the involvement of the accused. He submits that the mobile number which has been identified by the Swedish Police belongs to the accused. The Location Based Service (LBS) of the accused was checked and found to be around Jail Colony, Kohima, and accordingly, he was arrested from Jail Colony, Kohima. During the course

of investigation the evidence of transaction is also established circulated by the accused person. Investigation is yet to be completed as to whether the arrested accused has circulated the pictures and videos on payment in the Wickr platform. Therefore, it is not a fit case where the applicant can be granted bail.

6. Heard the learned counsel for the parties and also perused the Case Diary.

7. Pursuant to the D.O. letter received from Central Bureau of Investigation (CBI) dated 04.05.2023 providing information in connection with ongoing sexual abuse of child, a Suo Moto FIR was lodged on 18.05.2023. It is stated in the letter that the Swedish authorities had identified a possible child sex offender located in Nagaland. The suspect user name "loluncle" is active in several groups where Child Sexual Abuse Material (CSAM), is being shared and discussed in Wickr platform. The Swedish Police authorities had identified the suspect to be an Indian phone no. +919366746782. Interpol Sweden has also provided information that the suspect is involved in ongoing sexual abuse of 17 month old girl child. Accordingly, a case was registered, being Cyber Crime P.S. Case No. 3/2023 under Section 14 of POCSO Act read with Section 66(B) IT Act.

8. In the course of investigation it was found from open source on the web that phone no. +919366746782 belong to the accused, Shri Tova Sema. The Location Based Service (LBS) of the accused was checked and found to be around Jail Colony, Kohima. Thereafter, the accused was arrested. It is established that the accused had uploaded and shared child pornography videos in the Wickr platform. The evidence of transaction is also established and it is only to find out whether the accused is circulating the photos and videos in Wickr platform. The accused has also admitted his guilt as per his own statement.

9. Having considered the submissions of the learned counsel for the parties and on perusal of the materials available in the Case Diary, there exists incriminating materials against the accused Shri Tova Sema. Considering the materials, coupled with the fact that investigation is yet

to be completed, this Court is of the view that the accused Shri Tova Sema is not entitled to be released on bail at this stage.

10. Accordingly, the prayer for bail is rejected and dismissed.

Sd/-
JUDGE

Comparing Assistant