

Serial No. 05
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 16 of 2024

Date of Decision: 22.05.2024

Smti. Masbon Syiem,
W/o Shri. Kynpham Rynshon
R/o Mawlong Nongtluh Village
Ri-Bhoi District, Meghalaya

::: PETITIONER

-Vs-

1. The State of Meghalaya
Represented by the Commissioner
& Secretary, Home Department
Government of Meghalaya, Shillong

2. Shri. Kynpham Rynshon
R/o Mawlong Nongtluh Village
Ri-Bhoi District, Meghalaya

::: RESPONDENTS

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Mr. S.M. Suna, Adv.
For the Respondent(s)	:	Mr. H. Kharmih, Addl. PP. Mr. S. Sengupta, Addl. PP. 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 | |

JUDGMENT (ORAL)

1. Heard Mr. S.M. Suna, learned counsel for the petitioner, who has submitted that the notice issued upon the respondent No. 2 has been duly affected and affidavit of service has been filed in this regard annexed with the copy of the notice, wherein is found the signature of the notice receiver, that is, the respondent No. 2. However, the respondent No. 2 has failed to appear before this Court when the matter was called up for hearing. In view of such submission made, this Court hereby orders that this matter shall proceed ex-parte against the respondent No. 2.

2. In his submission on the merits of the case, the learned counsel for the petitioner has narrated the brief facts of the case by referring to his application and stating that the case emanated from the filing of the FIR by the respondent No. 2 on 22.07.2021, alleging that the accused had sexually assaulted a minor girl aged about 9 years old and for which, action in accordance with law is required to be taken. The FIR was then taken into account and Ri-Bhoi District Women P.S. Case No. 56 (07) 2021 under Section 5(m)(n)/6 of the POCSO Act, 2012 was

registered. Investigation was accordingly launched and the Investigating Officer on completion of the investigation, has filed the charge sheet on 07.09.2021 with the observation that a prima facie case under Section 5(m)(n)/6 of the POCSO Act is found well established against the accused person.

3. In due course, a regular case was registered as Special POSCO Case No. 18 of 2021 before the Court of the learned Special Judge (POCSO) at Nongpoh, Ri-Bhoi District and the accused person as the sole accused was taken up for trial. The court then framed the relevant charges against the accused person and the stage of the case was fixed for recording of the prosecution witnesses' evidence. Till date, about two out of the seven witnesses have been examined and discharged by the court.

4. The learned counsel has further submitted that it is at this point of time that this application is now preferred, seeking grant of bail on behalf of the accused person named, Shri. Counsellar Syiem, the petitioner being the mother of the said accused person. It is the contention of the learned counsel that the main ground for preferring this instant application is on the ground of the delay in trial. Instances have been cited to say that when the case was taken up for recording of

evidence on 24.06.2022, PW. 1 was examined and on 26.08.2022, PW. 2 was also examined. The learned counsel has also submitted that about one and a half year or so, no evidence has been recorded and this has in effect caused delay in the trial.

5. Notwithstanding the fact that the offence alleged are serious in nature, however, it is the entitlement of the accused person to be accorded fair treatment as in course of trial he is considered innocent until proven guilty at the conclusion of the trial. Therefore, the personal liberty of the accused person as enshrined under Article 21 of the Constitution of India has been violated. On this ground alone, the accused person is therefore entitled to be enlarged on bail, submits the learned counsel.

6. The second factor put forth by the learned counsel for the petitioner is that the accused person is a patient of a known case of Suppurative Otitis Media (CSOM) and Deviation of the Nasal Septum (DNS) which fact has been brought to the notice of the Trial Court. From time to time, a prayer has been made for grant of bail to the accused person, but such fact has been ignored by the Trial Court. It is also the submission of the learned counsel that since the charge sheet has been filed and that the trial has commenced, especially the fact that the two

most important witnesses, that is, the survivor and the complainant who had filed the FIR have been examined and discharged by the learned Trial Court, therefore, there is no question of tampering with the evidence and witnesses or even intimidation of the witnesses as far as the accused person is concerned.

7. The learned counsel has also submitted before this Court that about nine successive bail applications have been preferred before the Trial Court, but was rejected on the ground cited in such order passed by the learned Trial Court. However, it is pertinent to mention herein that the learned Trial Court has noted one of the reasons for rejection of the bail is that there is apprehension by the mother and the survivor that in case the accused person is enlarged on bail he will cause physical harm to their person. This according to the learned counsel for the petitioner cannot be contemplated, inasmuch as, the petitioner herein had given an assurance before the Trial Court that in the event of the accused being released on bail, he will shift his place of residence to a location which is about 45 kilometres or so from the residence of the survivor. It is also the submission of the learned counsel that in the event of his being enlarged on bail, he will abide by any conditions to be imposed by this Court.

8. In support of his submission, the learned counsel for the

petitioner has cited the following cases, wherein the Hon'ble Supreme Court has passed various judgments on the issue of bail. The said judgments are cited herein below:

- i) Sanjay Chandra v. Central Bureau of Investigation reported in (2012) AIR (SC) 830, para 26;
- ii) State of Kerala v. Raneef reported in (2011) 1 SCC 784;
- iii) Dataram Singh v. State of Uttar Pradesh reported in (2018) 3 SCC 22;
- iv) Prabhakar Tewari v. State of Uttar Pradesh & Anr reported in (2020) 11 SCC 648.

9. Per Contra, Mr. H. Kharmih, learned Addl. PP appearing for the State respondent No. 1 has submitted that firstly, the averments made at para 12 of this application indicating that the accused person is suffering from the said case of CSOM and DNS, the same could not be substantiated by documentary proof and as such, the Trial Court has rightly rejected such prayer made in this regard. Even before this Court, such documentary proof has not been furnished by the petitioner or the accused person for that matter to substantiate his claim for grant of bail on medical ground as far as the allegation of delay in trial is concerned.

10. The learned Addl. PP has candidly admitted that there has

been a delay in the proceedings, however, such delay has been caused due to unforeseen circumstances and reasons cited in the orders of the Trial Court, for which the court concerned or the prosecution cannot be blamed. The learned Addl. PP has also submitted that since bail is a discretion of the Court in the light of the facts and circumstances of the case, especially taking into account the nature and gravity of the offence alleged, and the conduct of the accused at the time of commitment of the offence has to be taken into account.

11. This Court, on consideration of the submission made, has perused the application and the annexures thereto and has also noted the pointed submission of the learned counsel for the petitioner as well as the learned Addl. PP.

12. At the outset, it may be noted that the accused person was arrested in connection with the said case on 22.07.2021 and is still in custody till date which is approximately about 2 years and 10 months. It is also to be noted that the evidence of the prosecution witnesses seven in all have not been completed, while only the survivor and the complainant have been examined and discharged. Though, the submission of the learned Addl. PP that the delay in trial cannot be attributed to the conduct of the court or the prosecution, however, the

learned Trial Court is well advised to look into the provision of Section 35 of the POCSO Act which provides that the period for recording of evidence and disposal of the case preferably should be within 30(thirty) days and that the trial should be completed within one year from the time the competent court has taken cognizance of the offence.

13. The submission of the learned counsel for the petitioner on the ground of delay is found valid and taking into account the fact that the two main witnesses, that is, the survivor and the complainant have had their evidence recorded, it may not affect the outcome of the case, if the accused person is enlarged on bail. As to the submission on the ground of the required medical attention as far as the accused person is concerned, the ground cited may not be relevant at this point of time.

14. The authorities cited by the petitioner, that is, the case of Sanjay Chandra(supra) at para 26 as well as the case of Raneef(supra) are interconnected, inasmuch as, the latter was referred in the former.

Para 26 of the Sanjay Chandra's case read as follows:

“26. When the under-trial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is: whether the same is possible in the present case. There are seventeen accused persons. Statement of the witnesses runs to several hundred pages and the

documents on which reliance is placed by the prosecution, is voluminous. The trial may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that accused should be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there is no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. We do not see any good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet. This Court, in the case of State of Kerala v. Raneef (2011) 1 SCC 784, has stated :-

"15. In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the respondent has already spent 66 days in custody (as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dicken's novel A Tale of Two Cities, who forgot his profession and even his name in the Bastille."

15. The case of Prabhakar Tewari(supra) speaks mostly of the

discretionary power of the Court as far as the grant or non-grant of bail is concerned, vis-à-vis the principles of bail. The said authority cited is found relevant by this Court as far as this instant case is concerned.

16. In view of the observations made hereinabove, this Court is of the opinion that the petitioner has made out a case for grant of bail as far as the accused person in question is concerned.

17. Accordingly, the accused person, Shri. Counsellar Syiem is hereby directed to be released on bail on the following conditions, that:

- i) He shall not abscond or tamper with the evidence and witnesses;
- ii) He shall not leave the jurisdiction of the State of Meghalaya without due prior permission of the court concerned;
- iii) He shall appear before the Trial Court as and when required;
- iv) He shall personally bind himself on a bond of ₹ 50,000/- (Rupees fifty thousand) only with one surety of like amount to the satisfaction of the Trial Court.
- v) On the assurance of the petitioner that the accused will now reside at 20th Mile, Ri-Bhoi District which is about

45 kilometres from the residence of the survivor, this is found acceptable by this Court and the accused is directed to comply with the same.

18. With the above-noted directions, this application is accordingly disposed of. No costs.

Judge

Meghalaya
22.05.2024
"D. Nary, PS"