



Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 20 of 2024

Date of Decision: 05.06.2024

Shri. Mojnu Sk,
S/o Shri. Azizur Rahman,
R/o Kharuabandha, P.O. & P.S.
Mankachar, Dhubri District, Assam.

::::: **Petitioner**

-Vs-

1. State of Meghalaya, Represented by its
Secretary, Home Department,
Government of Meghalaya, Shillong.

2. Shri. Sairill D. Marak,
Secretary Nokma Council,
Chengkompara A.King,
South West Garo Hills, Ampati

::::: **Respondents**

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. Philemon Nongbri, Adv. with
Mr. E. Lalsangluaia, Adv.

For the Respondent(s) : Mr. N. Syngkon, 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 Mr. Philemon Nongbri, learned counsel for the petitioner, who has submitted that the notice issued upon the respondent No. 2/complainant has been affected and for which, affidavit of service has been filed before this Court being confirmed from the document at Annexure-2 which is the Track Consignment record issued by the post office indicating therein that the notice has been received by the notice receiver on 22.05.2024. In fact, Mr. N. Syngkon, learned GA appearing on behalf of the State respondent No. 1 has submitted that the respondent No. 2 had contacted him to indicate that he is aware of this matter. Be that as it may, since the respondent No. 2 is not in attendance today, matter shall proceed ex-parte against him.

2. The learned counsel for the petitioner has also submitted that the petitioner has preferred this instant application for grant of bail under Section 439 Cr.P.C on behalf of his brother named, Shri. Monjul Hoque, who is an accused in connection with Spl. POCSO Case No. 4 of 2024 pending before the Court of the Learned Special Judge, POCSO, Ampati, South West Garo Hills District. The accused was arrested in connection



with Ampati Women P.S. Case No. 61 (11) 2023 under Section 341/506 IPC read with Section 3(a)/4 of the POCSO Act on the allegation that he was instrumental in a case of alleged sodomy involving two minor boys.

3. On the case being investigated into, the Investigating Officer had filed the charge sheet on 25.01.2024 with the opinion that a prima facie case has been found well established against the accused person in question, for which he is to stand trial before a competent court of jurisdiction. Again, it is submitted that the Trial Court has framed charges against the accused person on 23.04.2024 and the stage of the case is for recording of evidence of the prosecution witnesses, however, till date, since the charges have been framed, no witnesses have been examined so far.

4. The learned counsel has further submitted that the accused person in question is in custody for the last 200 days or so and since the matter is at the trial stage, as such, there is no question of tampering with the witnesses or evidence. It is therefore prayed that this application may be allowed and the accused person, if enlarged on bail, would undertake to comply with any conditions to be imposed by this Court.



5. Mr. N Syngkon, learned GA has submitted that the case is serious in nature, however, as far as the recording of evidence is concerned, he submits that he has no specific instructions in this regard. He therefore prays that this Court may exercise its discretionary power and to pass necessary orders.

6. This Court, on consideration of the submission made by the parties, and on perusal of the application and the accompanying annexures including the FIR and the charge sheet, is of the opinion that the offence alleged are indeed serious considering the nature and gravity of the case. However, it is also to be noted that the actual trial as far as the recording of evidence has not yet commenced, and the purpose of bail generally is to ensure that the accused in question will not or shall not abscond and that he/she will cooperate with the proceedings. Considering the fact that the accused person has been in custody for quite some time, it would be just and proper to allow him to prepare his defence without the constraint of custodial incarceration. On this ground alone, this Court is inclined to allow the prayer made herein.

7. The accused person, Shri. Monjul Hoque is hereby directed to be released on bail on the following conditions that:



- i) He shall not abscond or intimidate the witnesses, particularly the survivors;
- ii) He shall not leave the jurisdiction of India without prior permission from the court concerned;
- iii) He shall have no physical contact whatsoever with the survivors during the pendency of the case;
- iv) He shall appear before the court as and when required;
- v) He shall bind himself on a personal bond of ₹ 1,00,000/- (Rupees one lakh) only with two sureties of like amount to the satisfaction of the Trial Court;

8. In view thereof, this application is accordingly disposed of. No costs.

Judge

Meghalaya
05.06.2024

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