



Serial No. 03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Rev.P. No. 5 of 2024

Date of Decision: 10.07.2024

Smti. Aitimary Mawlong
 Wife of (Late) Monlang D. Kamar
 Resident of Ladthadlaboh,
 P.O & P.S: Jowai,
 District: West Jaintia Hills, Meghalaya
 Pin Code: 793150

.....Petitioner

-Versus-

1. State of Meghalaya
 Through the Public Prosecutor.
2. Shri Emlang Laloo
 R/o-Village: Saitsam,
 P/O & P.S: Jowai,
 District: West Jaintia Hills, Meghalaya

.....Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	: Mr. S.D. Upadhaya, Legal Aid Counsel
For the Respondent(s)	: Ms. N.G. Shylla, Sr. GA with Ms. A. Thungwa, GA Mr. A. Momin, GA (For R 1) Mr. R. Kharkrang, Adv. (For R 2)



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

ORDER (ORAL)

1. Heard Mr. S.D. Upadhaya, learned Legal Aid Counsel who has submitted that this is an application preferred under Section 439(2) read with Section 482 Cr.P.C, 1973 with a prayer to set aside and quash the order dated 20.05.2024 passed by the learned Special Judge (POCSO), West Jaintia Hills District, Jowai in Bail Application No. 7/2024 in connection with Jowai P.S. Case No. 31(5)2024 under Section 3(b)/4 of the POCSO Act, 2012.

2. The learned counsel has further submitted that the background facts and circumstances of the case is that on 17.05.2024 the petitioner herein had lodged an FIR before the Officer-in-Charge, Jowai Police Station intimating the concerned authority that her minor daughter aged about 9 years old was sexually assaulted by the respondent No. 2 herein, twice in the year 2023 when she was residing at his house as a tenant therein.

3. On receipt of the said FIR dated 17.05.2024 the police have accordingly registered the case as Jowai P.S. Case No. 31(5)2024 under Section 3(b)/4 of the POCSO Act, 2012 and at about 9:50 p.m. of the same day, the respondent No. 2 was arrested. However, in the process of his



arrest, the respondent No. 2 was sent for medical examination at the Jowai Civil Hospital whereupon the concerned doctor had advised admission of the respondent No. 2 in the emergency ward of the hospital. On 18.05.2024, this patient was then referred to NEIGRIHMS for further treatment and as such, he could not be formally arrested as he was interned at the said hospital.

4. The learned counsel has then submitted that the petitioner came to learnt that a bail application seeking grant of bail on behalf of the accused person/respondent No. 2 was preferred before the learned Special Court, POCSO, West Jaintia Hills District and vide order of even date the learned Special Judge (POCSO) had granted bail to the accused person/respondent No. 2 which order is now impugned in this instant application.

5. It is the submission of the learned Legal Aid Counsel that the learned Special Judge (POCSO) had committed grave error in law and facts while passing the impugned order inasmuch as in a case as serious in nature involving offences under the POCSO Act, bail was granted within a very short period of 3(three) days from the date of arrest of the accused person/respondent No. 2.

6. One of the grounds cited in the impugned order resulting in the grant of bail to the accused person/respondent No. 2 was on medical ground, however this could not have been a valid ground for granting bail inasmuch as when the respondent No. 2 was sent for medical treatment at NEIGRIHMS the same being a premiere medical institute in the North-Eastern Region of India having all the medical facilities including super



specialist doctors, he could very well be treated at the said hospital without the need of enlarging him on bail.

7. It is also the submission of the learned counsel that the learned Special Judge (POCSO) without calling for the I/O's report including the medical report and also without affording an opportunity to the petitioner as the complainant to be heard when the bail application was taken up for hearing had in a routine manner disposed of the said bail application.

8. The apprehension of the petitioner is that the respondent No. 2 being an influential person in the society, there is apprehension that he may influence the course of investigation and might even threaten the complainant and the survivor. As such, it is imperative that the said order for grant of bail be set aside and quashed and the respondent No. 2 be remanded to custody under the circumstances.

9. In support of his case for cancellation of the bail granted to the respondent No. 2, the learned Legal Aid Counsel has referred to the order dated 10.12.2021 passed by this Court in CrI.Rev.P. No. 6 of 2021, para 24, 25, 29, 30, 32 and 34.

10. Ms. N.G. Shylla, learned Sr. GA appearing for the State respondent No. 1 has submitted that there may have been a miscommunication between the I/O and the learned Spl. P.P who was conducting the hearing of the said bail application (supra) when a concession has been made by the learned Spl. P.P that the accused person/respondent No. 2 at the relevant point of time has been detained



beyond the period of twenty-four hours without the order of the court and hence on this ground alone no objection was raised on the prayer made in the said bail application which resulted in the passing of the impugned order.

11. The learned Sr. GA would submit that a perusal of the case diary, copy of which is produced before this Court, would show that the I/O concerned had submitted an intimation report as regard the said Jowai P.S. Case No. 31(5) 2024 under Section 3(b)/4 POCSO Act before the Special Judge (POCSO), Jowai Court, West Jaintia Hills District through P.I. Jowai Court on 18.05.2024 wherein the fact that an FIR dated 17.05.2024 was filed by the petitioner/complainant herein naming the respondent as the perpetrator of the alleged sexual assault upon her minor daughter and also the fact that the accused person/respondent No. 2 was arrested and sent for medical examination at Jowai Civil Hospital and thereafter was referred to NEIGRIHMS for which he could not be physically produced on court on the said day was duly intimated to the court concerned. Therefore, the learned Special Judge (POCSO) was misled into believing that no intimation of the arrest of the respondent No. 2 was made known to the court.

12. The learned Sr. GA while concurring with the submission of the learned Legal Aid Counsel as far as participation of the complainant/petitioner in the hearing of the bail application (supra) has referred to the case of Informant v. State of Karnataka, by Maddur Police & Anr. reported in 2023 SCC Online Kar 69, para 11 & 15 to say that



since the complainant was not given the opportunity to be heard at the time of passing of the impugned order, therefore the bail granted to the respondent No. 2 is liable to be cancelled on this ground alone.

13. Mr. R. Kharkrang, learned counsel for the respondent No. 2 has defended the passing of the impugned order and has submitted that the same has been passed taking into account the relevant facts and circumstances and the law applicable.

14. The learned counsel while referring to the impugned order has submitted that the FIR filed by the petitioner does not contain all the relevant facts inasmuch as though the allegation was made that the minor daughter of the petitioner was sexually assaulted by the respondent No. 2 in the year 2023, no exact date has been mentioned as to the occurrence of the incident.

15. However, the learned counsel would stress on the contention that the learned Special Judge (POCSO) was right in passing the impugned order since it is apparent on the face of record that the respondent No. 2 was arrested on 17.05.2024 and even after twenty-four hours of such arrest, he was never produced before the Magistrate nor was any order passed to allow the arresting authority to detain him in custody.

16. To confirm this fact, the learned counsel has referred to para 16 and 17 of the impugned order wherein the learned Special Judge (POCSO) has taken note of an intimation report dated 18.05.2024 including the Inspection Memo dated 17.05.2024 filed by the I/O detailing the sequence



of events from the time the accused person/respondent No. 2 was arrested till he was referred to the Jowai Civil Hospital and subsequently to NEIGRIHMS. The learned Special Judge (POCSO) has, however, indicated that the intimation of the arrest/detention of the accused person has not been brought to the notice of the court or the learned Judicial Magistrate on duty for necessary orders. Thus, it is apparent that the accused person/respondent No. 2 has been illegally detained under police custody for more than the statutory twenty-four hours. Granting of bail in favour of the respondent No. 2 vide the impugned order is therefore justified, submits the learned counsel.

17. To further consolidate his argument on this aspect, the learned counsel has referred to Article 22(2) of the Constitution of India which provides that a person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest. The provision of Section 57 of the Code of Criminal Procedure, 1973 which speaks of the same thing was also referred to by the learned counsel. The case of *Satyajit Ballubhai Desai & Ors. v. State of Gujarat*, (2014) 14 SCC 434, para 10, 11 and 12 wherein the Hon'ble Supreme Court had elaborately explained the abovementioned provisions was also cited in this regard.

18. To elaborate on his submission the learned counsel has referred to the case of *Directorate of Enforcement v. Deepak Mahajan & Anr.*, (1994) 3 SCC 440 wherein at para 46 of the same, the Hon'ble Supreme Court has defined the word 'arrest', where inter alia, arrest also meant



deprivation of personal liberty of a person to go where he pleases.

19. In view of the above the learned counsel has submitted that there is no infirmity or illegality or even irregularity in the passing of the impugned order and the same may not be disturbed by this Court.

20. On consideration of the submission and contention made by the learned counsels for the respective parties, what could be understood is that the case of the petitioner rests on the fact that being the complainant in a matter so serious involving an offence under the POCSO Act, the learned Special Court (POCSO) while taking up the hearing on the bail application filed on behalf of the respondent No. 2, she ought to be heard before any effective order is passed which is not done so.

21. The learned Legal Aid Counsel has referred to the order dated 10.12.2021 in CrI.Rev.P. No. 6 of 2021 wherein this Court while considering a case for cancellation of bail, has elaborately discussed the issue with the help of relevant authorities, particularly those of the Supreme Court. At para 32 the case of Kanwar Singh Meena v. State of Rajasthan & Anr., (2012) 12 SCC 180, para 10 was cited which is reproduced herein below for the purpose of elucidation:

“10. Thus, Section 439 of the Code confers very wide powers on the High Court and the Court of Sessions regarding bail. But, while granting bail, the High Court and the Sessions Court are guided by the same considerations as other courts. That is to say, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and



repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds are required to be taken into consideration. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. The court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police and comment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial. While cancelling the bail under Section 439(2) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well-recognized principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail.”

22. The learned Sr. GA has stressed on the fact that the impugned



order was passed without any basis since the settled position of law that the victim of a crime has the right to participate in criminal proceedings at various stages including at the stage of bail proceedings. The case of Jagjeet Singh & Ors. v. Ashish Mishra Alias Monu & Anr., (2022) 9 SCC 321, para 22 and 23 was cited in this regard wherein the Hon'ble Supreme Court has observed as follows:

“22. It cannot be gainsaid that the rights of a victim under the amended CrPC are substantive, enforceable, and are another facet of human rights. The victim's right, therefore, cannot be termed or construed restrictively like a brutum fulmen. We reiterate that these rights are totally independent, incomparable, and are not accessory or auxiliary to those of the State under the CrPC. The presence of “State” in the proceedings, therefore, does not tantamount to according a hearing to a “victim” of the crime.

23. A “victim” within the meaning of CrPC cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a “victim” has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that “victim” and “complainant/informant” are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a “victim”, for even a stranger to the act of crime can be an “informant”, and similarly, a “victim” need not be the complainant or informant of a felony.”

23. As far as the issue as to whether the accused person/respondent No. 2 was arrested or not is a forgone conclusion inasmuch as the I/O had clearly indicated to that effect even while referring to the said intimation report dated 18.05.2024. Though there was no physical apprehension of



the respondent No. 2 at the time when he was arrested since he was already referred to the Jowai Civil Hospital and thereafter to NEIGRIHMS, that his wife was intimated of the arrest on 17.05.2024 can only confirm the fact of arrest.

24. However, this Court fails to understand the factual situation at the relevant point of time when the learned Special Judge (POCSO) at para 16 and 17 of the impugned order had made a clear reference to the intimation report dated 18.05.2024 filed by the I/O, addressed to the self-same court, albeit the same being forwarded through the PI Jowai Court, who is expected to do the needful, that is to place the relevant report before the court concerned. Since the learned Special Court (POCSO) had indicated that no such intimation report was placed before the court or even before the learned Judicial Magistrate on duty, the I/O could not be faulted and the matter would require an internal enquiry as to how the situation has come to such a pass. Be that as it may, it is also incomprehensible to this Court as to why the learned Special Judge on being aware of such intimation report has failed to regularise the same at the relevant point of time. In the opinion of this Court, failure to do so has resulted in passing of the impugned order.

25. As to the observance of the well settled practice to allow the victim or the complainant to be heard whenever a bail application is moved, particularly in cases involving crime against women and children, the authority in the case of Jagjeet Singh (supra) still holds the field, the learned Special Judge (POCSO) has deprived the complainant/petitioner



herein to be heard when the said bail application was taken up resulting in the passing of the impugned order. Even on this ground alone the said impugned order is liable to be set aside and quashed.

26. It is also brought to the notice of this Court that in the meantime the chargesheet has already been submitted by the I/O in the month of July 2024 finding that a prima facie case under Section 3(b)/4 read with Section 9(1)/99(m) POCSO Act is found well established against the accused person/respondent No. 2 and is directed to face trial.

27. However, on consideration of the merits as far as this revision petition is concerned, this Court finds that a case has been made out for cancellation of the bail granted on the ground that the impugned order is not found to be sustainable in law and facts.

28. Accordingly, the impugned order dated 20.05.2024 passed in Bail Application No. 7/2024 passed by the learned Special Judge (POCSO) West Jaintia Hills District, Jowai is hereby set aside and quashed.

29. Prosecution is directed to take necessary steps.

30. Petition disposed of. No. costs.

Judge