



Serial No. 02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 30 of 2024

Date of Decision: 13.09.2024

Smti. Merilin Wahlang
D/O John Khriam
R/o Nongmensong
East Khasi Hills District, Meghalaya

.....Petitioner

-VERSUS-

1. The State of Meghalaya
Represented through Secretary and Commissioner,
Home Police Department
Government of Meghalaya, Shillong
2. The Superintendent of Police,
Shillong East Khasi District, Meghalaya
3. Smti. Klisda Mukhim
M/o Miss xxx
T/A Mawiong Umjapung
P/A Nongkhroh Village Nartiang
West Jaintia Hills District Meghalaya - 793151

.....Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	: Ms. S. Nongsiej, Adv.
For the Respondent(s)	: Mr. R. Gurung, GA (For 1 & 2) Ms. P. Chettri, Legal Aid Counsel (For R 3)



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

ORDER (ORAL)

1. Heard Ms. S. Nongsiej, learned counsel for the petitioner who is the wife of the accused person, Shri. Thosterning Lyngdoh Nonglait. The learned counsel has submitted that the accused person in question was arrested on 12.03.2023 in connection with Diengpasoh P.S. Case No. 01(03) of 2023 under Section 5(g)/6 of the POCSO Act. The case in the meantime has been charge sheeted and has now proceeded for trial. Till date only one witness has been examined out of the 32 witnesses.

2. The learned counsel has also submitted that this is the second bail application preferred before this Court, the earlier one being disposed of vide order dated 12.06.2024. As has been the submission in the earlier bail application, the petitioner would stress on the fact that that in spite of the relevant provision of Section 35 of the POCSO Act which provides for speedy trial inasmuch as the trial court is mandated to complete the trial within a period of one year, however till date after more than one year, as has been submitted only one witness has been examined. Therefore the concept of speedy trial has been defeated as far as the case involving the accused person is concerned.



3. The learned counsel has also submitted that in the previous order dated 12.06.2024 noticing this aspect of the matter this Court has directed the trial court to frame the charges at the earliest and to commence with the actual trial which was done so. However, again, as has been submitted, till date only one witness has been examined. The witness though being the survivor was examined by the court only two and a half months ago. This being the case the right of the accused being deprived inasmuch as the cause for speedy trial being hampered even admitting that the charges are serious in nature nevertheless under the facts and circumstances of this case, the accused person in question is entitled to be granted bail.

4. It is the further submission of the learned counsel that the accused person is the only bread earner of the family having his aged parents, a wife and a minor daughter to take care of and if not enlarged on bail their survival will be at stake.

5. As to the allegation that if enlarged on bail the accused person in question will indulge or rather will threaten the complainant or the accused, the learned counsel has submitted that the accused person in question is a resident of another district, that is, Eastern West Khasi Hills District and stays very far away from the residence of the complainant and the survivor. There is no question of threat whatsoever in this regard.

6. Coming back to the issue of speedy trial, the learned counsel has cited the case of Javed Gulam Nabi Shaikh v. State of Maharashtra & Anr., wherein the Hon'ble Supreme Court in Criminal Appeal No. 2787



of 2024 vide order dated 03.07.2024 at para 19 has observed as follows:

“19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”

7. The learned counsel has also cited the case of Shri. Bashanbha Syngkli v. State of Meghalaya wherein in BA No. 15 of 2024 vide order dated 31.05.2024 this Court in a similar case under the POCSO Act at para 7 has discussed the implication of Section 35 vis-à-vis speedy trial and has mandated that it is incumbent upon the trial court to complete the proceedings as far as possible within a period of one year.

8. It is therefore prayed that this petition may be allowed and the accused person may be enlarged on bail with any conditions that this Court may deem fit and proper to be imposed.

9. Per contra, Mr. R. Gurung, learned GA while opposing the bail application has impressed upon this Court the seriousness of the offence wherein the instant case involves the incident of gang rape on the minor daughter of the complainant and the accused person in question has also issued threats upon the complainant and the survivor which factor ought to be considered by this Court.

10. It is also the submission of the learned GA that as far as the issue of speedy trial is concerned, the case has proceeded, however the



deposition of the complainant is yet to be completed and as such, this Court may allow the recording of such deposition to continue. It is therefore prayed that this petition being devoid of merits may be rejected.

11. Ms. P. Chettri, learned Legal Aid Counsel appearing on behalf of the respondent No. 3/complainant in support of the contention and submission made by the learned GA has further submitted that the accused person has indeed threatened the complainant and the survivor who are poor and destitute. Under such circumstances, it may not be proper for this Court to enlarge the accused person on bail.

12. This Court has considered the submission made by the parties and has also gone through the deposition including the annexures thereto. A copy of the deposition of the survivor has also been produced by the learned counsel for the petitioner. To the extent of repetition, it may be recalled that the case of the prosecution is that on 12.03.2024 at about 12.43 pm a couple being husband and wife encountered the survivor along the Diengpasoh-Shillong bypass road who was crying for help and from her narration of the incident which took place, it was understood that she was sexually assaulted by three persons at Diengpasoh-Shillong bypass road. The said minor girl was then handed over to the police who took up the matter and on coming to know of the incident from her, it has been established that three persons were involved in a case of sexual assault upon the said survivor. Accordingly, the police have registered the said Diengpasoh P.S. Case No. 01(03) of 2023 under Section 5(g)/6 of the POCSO Act and eventually, upon investigation being completed, the charge sheet



was filed finding a prima facie case being well established against the three accused persons. As has been pointed out, the case is now at the trial stage upon one survivor being examined.

13. This Court has carefully considered the contention raised by the learned counsel for the petitioner as far as the provision of Section 35 of the POCSO Act is concerned. It is a fact that the provision of Section 35 mandates that the special court shall complete the trial as far as possible within a period of one year from the date of taking cognizance of the offence. So if the charge sheet was taken cognizance by the Court on 05.06.2023, the trial ought to have been completed within 05.06.2024.

14. The provision of sub-Section 2 of Section 35 reads as follows:

“(2) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence” which means that the trial court is to complete the trial within a period of one year.”

The word “as far as possible” found in this Section would indicate that the same is not mandatory but obligatory depending on the circumstances prevalent. This Court however, even while conceding that the trial be completed within one year would still give a leeway to the trial court depending on the understanding of the word “as far as possible” to say that if the trial could not be completed within one year and there is a possible explanation to the same, no wrong would have been committed by the trial court in this regard if the trial exceeds the one year period.



15. In the earlier application under the facts and circumstances therein, the trial court on heeding to the direction of this Court passed in the previous order had accordingly complied with the same and has framed the charges and commence with the examination of the witnesses. Till date, one witness has been examined and about 32 witnesses are left to be examined.

16. It is to be noted that the case under consideration is that of an allegation of gang rape, the seriousness of the offence cannot be minimized and in issues of bail the Court would have to balance the interest of society, law with that of the interest of the individual concerned.

17. A perusal of the materials on record though prima facie would reveal that the conduct of the three persons including the accused person in question and the manner in which the sexual assault was perpetrated has shocked the conscience of the Court.

18. Under such circumstances, this Court is of the considered view that no leniency can be allowed as regard the prayer of the petitioner.

19. The trial court will take its own course as far as completion of the trial is concerned. However, considering the facts and circumstances as on date, this Court is not inclined to allow the petition, the same is hereby dismissed.

20. Petition disposed of. No costs.

Judge