

Serial No. 25
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Rev.P. No. 12 of 2023 with
Crl.M.C. No. 62 of 2023

Date of Decision: 23.04.2024

Shri. Lalzawmliana,
S/o Lalsawma,
R/o Vill – Kalasib, Tuitha Veng
Near Zothan, Tata Motor Work
Dist – Kolasib, Mizoram

::: Petitioner

-Vs-

1. Shri. Royte Lalrim Puia
S/o Shri. Lalkima
R/o C/o F – Coy 119 I.N.F BN
(Territorial Army), Narangi,
Guwahati, District – Kamrup
Assam – 781026.
2. The State of Meghalaya
Represented by the
Commissioner Secretary and
Government of Meghalaya,
(Home) Police Department
Shillong.
3. The Investigation Officer
Madanriting P.S. Case No.
108 (8) 2022 U/S 3(a)/4 of
POCSO Act, 2012.

::: Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Ms. P. Chettri, Adv.
Ms. Q. Kharmawlong, Adv.

For the Respondent(s) : Mr. S. Thapa, Adv. for R 1.
Mr. K. Khan, PP. with
Mr. S. Sengupta, Addl. PP.
Mr. A.H. Kharwanlang, Addl. Sr. GA.
For R 2 & 3.

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

JUDGMENT (ORAL)

1. Heard Ms. P. Chettri, learned counsel for the petitioner, who has submitted that the respondent No. 1 who is an accused in connection with Madanriting P.S. Case No. 108 (8) 2022 under Section 3(a)/4 of the POCSO Act, 2012 being accused of committing an act of sexual assault upon the minor daughter of the petitioner herein, had approached the Trial Court for grant of bail. The learned Trial Court upon hearing the accused/respondent No. 1, had vide order dated 02.12.2022 passed in Bail Application No. 123 of 2022 enlarged him on bail with conditions.

2. The learned counsel has also submitted that the petitioner being the complainant, who had filed the FIR, and as such, having a keen interest in the proceedings, was not made aware of the said application for bail

filed by the respondent No. 1 and also of the subsequent impugned order dated 02.12.2022 passed by the learned Trial Court. Being aggrieved by the impugned order, this application under Section 439(2) read with Section 482 of the Code of Criminal Procedure, 1973 was accordingly preferred before this Court with a prayer for cancellation of the bail granted to the respondent No. 1.

3. The justification for the ground taken by the petitioner is that the learned Trial Court ignoring the authority laid down in the case of Jagjeet Singh & Ors v. Ashish Mishra alias Monu & Anr, reported in (2022) 9 SCC 321, particularly the observations at para 43 and 44 respectively, would indicate that any application for grant of bail made before any competent court of jurisdiction has to include the victim to be given an opportunity to be heard before any order is passed which is not the case as far as the impugned order is concerned, and on other grounds cited in the petition, the learned counsel has submitted that the bail granted by the said impugned order may be cancelled and the respondent No. 1 be taken into custody.

4. Mr. K. Khan, learned PP appearing for the State respondent Nos. 2 & 3, also relying on the said Jagjeet Singh's case, has submitted

that, without going into the other issues raised in this petition, it would be sufficient, if this Court in exercise of its inherent power and in compliance with the authorities so laid down in the case of Jagjeet Singh(supra) be pleased to remand the matter to the learned Trial Court with a direction for the said Bail Application No. 123 of 2022 to be re-heard and for the victim/survivor to be given an opportunity to be heard.

5. Mr. S. Thapa, learned counsel for the respondent No. 1 has submitted that the fact that the respondent No. 1 has complied with the bail conditions, and also the fact that his enlargement on bail is also known to the survivor, any order passed in this regard, would cause prejudice to the respondent No. 1 and as such, it is prayed that this petition may be dismissed.

6. On consideration of the submission made, this Court, is in agreement with the learned PP that the moot issue to be decided is as to whether the matter of the consideration for bail is to be remanded to the Trial Court for reconsideration.

7. This Court, in exercise of its inherent power under Section 482 Cr.P.C is well within its jurisdiction to pass such order for ends of justice.

8. On appreciation of the facts and circumstances as has been

presented herein, it would be prudent to direct the Trial Court to take up the hearing on the bail application preferred by the respondent No. 1. The Trial Court is also to allow the survivor to take part in the hearing to assist the prosecution. Accordingly, the impugned order dated 02.12.2022 passed in Bail Application No. 123 of 2022 is hereby set aside and quashed. The respondent No. 1 is hereby directed to file a fresh bail application within 2(two) weeks from the date of this order, arraying the prosecution as well as the survivor as party respondents. It is also made clear that in the meantime, no coercive action is to be taken against the respondent No. 1 till the said bail application is disposed of by the Trial Court.

9. In view of the above, this petition is accordingly disposed of.
No costs.

Judge

Meghalaya
23.04.2024
"D. Nary, PS"