



Serial No. 05
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 71 of 2024

Date of Decision 05.11.2024

Md. Shahab Uddin, (Age 24 years)
S/o Md. Abdul Aziz,
R/o Village No. 02 Malibari Pathar,
P.S. Boko, District: Kamrup (Rural)
Assam.

..... Accused

-AND-

Md. Rabil Hussain,
S/o Abdul Aziz,
R/o Village No. 2 Barua Pathar,
P.S. Boko, District: Kamrup (Rural),
Assam.

..... Petitioner

-Vs-

1. The State of Meghalaya,
(Represented by the Public Prosecutor,
Meghalaya).
2. Morin Jynthem,
W/o Shri. Tamlin Shdap @ Shadap
R/o Village: Pahammawlein,
20th Mile Byrnihat
P.S. Police Outpost Byrnihat
District: Ri-Bhoi, Meghalaya.

..... Opposite Parties

**Coram:**

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Mr. B. Chowdhury, Adv. Mr. A. Akbar, Adv.
For the Respondent(s)	:	Mr. S. Sengupta, Addl. PP. 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 (ORAL)

1. Heard Mr. S. Sengupta, learned Addl. PP appearing for the State respondent No. 1, who has submitted that he is verbally instructed by the respondent No. 2 to set up a joint defence as far as this matter is concerned. Considering the fact that the respondent No. 2 is residing in a remote area and is unable to engage a private counsel, though a Legal Aid Counsel was also offered to her, she had insisted that the State should take her defence as well.

2. Also heard Mr. B. Chowdhury, learned counsel for the petitioner, who has submitted that this case has been initiated on the



strength of an FIR dated 14.05.2024, wherein the respondent No. 2, who is the mother of the survivor had complained before the Officer-in-Charge, Police Outpost, Byrnihat, stating that Md. Shahab Uddin had sexually assaulted her minor daughter on 14.05.2024 at about 2:00 AM or so at his rented house which is near her house. Accordingly, an FIR was registered as Women P.S. Case No. 19 (05) 2024 under Section 3(a)/4 POCSO Act read with Section 376 IPC.

3. In course of investigation, the Investigating Officer (I/O) having completed all formalities has thereafter filed the charge sheet on 28.06.2024 finding a prima facie case well-established against the accused person and directing him to be tried before the competent court of jurisdiction. The matter was then taken up by the learned Special Judge (POCSO), Ri-Bhoi District, Nongpoh and the matter is now fixed for consideration of charge.

4. The learned counsel has further submitted that at this point of time, this application has been preferred by the brother of the accused person in question with a prayer for grant of bail on the ground that the accused person has been in custody for about 5(five) months or so. He



also submits that the accused person has no criminal antecedent and the alleged offence according to the accused person was based on a consensual act as is reflected from the submission made by the survivor herself before the I/O as well as before the Magistrate under Section 164 Cr.P.C, wherein, inter alia, she has stated that she went to the rented room of the accused person many times and had sexual intercourse with him for five to six times. It is only on the said date of incident at about 2:00 AM when her brother came searching for her that the relationship between her and the accused person in question came to be known. Hence, the FIR.

5. At this point of time, the learned counsel submits that the accused person being a young man may be allowed to be enlarged on bail so that he can defend his case properly.

6. Mr. S. Sengupta, learned Addl. PP has opposed the prayer made, and has stated that inspite of the statement made by the survivor that the alleged act was consensual in nature, however, the fact that she is below the permissible age, consent is immaterial as far as the law is concerned. Therefore, the prayer made by the learned counsel for the petitioner may not be allowed, submits the learned Addl. PP.



7. This Court is conscious of the fact that this is a case where an allegation of sexual assault on a minor is involved and prima facie, the evidence would show that the accused person in question is involved in the said offence. However, on an overall consideration of the facts and circumstances of the case, coupled with the fact that the survivor herself has indicated that the act was consensual in nature, this Court is of the view that the entire matter as far as the merits of the case is concerned, would be finally decided by the Trial Court on appreciation of the complete evidence at the end of the trial.

8. Again, taking into account the relationship between the accused person and the survivor, this Court is inclined to allow this petition at this point of time.

9. Accordingly, the accused person, Md. Shahab Uddin is directed to be released on bail on the following conditions that:

- i) He shall not abscond or tamper with the evidence or witnesses;



- ii) He shall not leave the jurisdiction of the State of Assam and Meghalaya without the permission of the court concerned;
- iii) He shall appear before the Trial Court as and when required;
- iv) He shall have no contacts physically or otherwise with the survivor in course of the trial till completion of the same; and
- v) He shall bind himself on a personal bond of ₹ 30,000/- (Rupees thirty thousand) only with two sureties of like amount to the satisfaction of the Trial Court.

10. In view of the above, this application is accordingly disposed of. No costs.

Judge