

GAHC010015412024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./84/2024

NEMNEIKIM RALSUN @ KIMI RALSUN YADAV
W/O MAJOR SHAILENDRA KUMAR YADAV
R/O HAFLONG TOWN BLOCK-I,
(RAILWAY COLONY), LAKE VIEW ROAD, HAFLONG TOWN,
P.O. AND P.S. HAFLONG,
DIMA HASAO, ASSAM
PIN-788819

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM
2:MRS. NENGKHONEI SINGSIT
S/O VICTIM
P.O. AND P.S. HAFLONG
SONGPIJANG VILLAGE

DIMA HASAO
ASSAM

PIN-78881

Advocate for the Petitioner : MR. S MITRA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 06.02. 2024

Heard Mr. S. Mitra, learned counsel for the petitioner and Mr. D. Das,
learned Addl. Public Prosecutor for the State respondent No. 1.

From the report and the office note, it reveals that the notice has already received by the respondent No. 2, but no one has appeared on behalf of the respondent No. 2.

This is an application under Section 482 Cr.P.C., 1973 seeking a direction to the learned Special Judge, Dima Hassao, to expeditiously dispose of the Criminal Misc. Bail Application No. 01/2024, pending before the learned Special Judge, Dima Hassao, Haflong in connection with Special (POCSO) Case No. 42/2023 arising out of Haflong P.S. Case No. 74/2023.

The present petition has been filed against the orders dated 03.01.2024 and 09.01.2024, passed by the learned Special Judge, Dima Hassao in connection with Criminal Misc. Bail Application No. 01/2024 arising out of Haflong P.S. Case No. 74/2023.

It is submitted by the learned counsel for the petitioner that the accused petitioner is not mentally fit and sound and her present mental condition is further deteriorating to a sudden and frequent panic attack, frequent hallucinations, frequent delusions, self-harming suicidal thoughts and talks and accordingly the petition was filed by the father of the accused petitioner narrating the brief history of her mental health with a further prayer for conducting an enquiry as per Section 328 Cr.P.C. Accordingly, the learned Sessions Judge also vide order dated 09.11.2023 registered a misc. enquiry case, being Misc. Enquiry Case No. 01/2023 and further pleased to fix the matter on 16.11.2023 for hearing and after hearing the matter, the learned District & Sessions Judge, Dima Hassao, Haflong was pleased to direct the learned CJM, Dimasao to conduct an enquiry by himself or by any other Magistrate and directed to send back the report after completion of the said enquiry.

In the meantime, the accused petitioner filed a bail application before the learned Sessions Judge, Dima Hassao, Haflong on the ground that she was suffering from mental illness, which she was diagnosed in the years 2021 at Appollo Hospital, Indore, Madhya Pradesh and had also undergone treatment for the same at Palampur, Himachal Pradesh. The said bail application was numbered as Crl. Misc. Bail Application No.194/2023. After hearing both sides and after perusal of the case diary, bail was rejected vide order dated 18.12.2023.

In the same time a Misc. Enquiry was conducted and the proceedings was numbered as Misc. Enquiry No. 1/2023 in compliance with the provisions under Section 328 Cr.P.C. for determination as to whether the accused petitioner is of unsound mind and after observing all necessary formalities in presence of the Medical Board constituted and finally the learned CJM who conducted the enquiry had received the medical examination report, which reads as follows:

“Mrs. KIMI RALSUN, 29 years, Female, C/O. S. Yadav was examined by me on 20.12.2023, at district Sub-jail, Haflong, Dima Hasao. From the history and the mental status examination, I am of the opinion that she requires proper observation in a mental health facility and psychological assessment. As there is no psychiatrist and psychologist in Haflong Civil Hospital, I would advise referral to a higher centre for the same.”

Accordingly, the learned CJM also prepared enquiry report on 06.01.2024. The learned Special Judge on the other hand fixed the date on 03.01.2024 for production of the accused petitioner and fixed the matter on 09.01.2024. However, on 09.01.2024, the learned Special Judge did not pass any order on bail application and it was observed that the bail application will be considered after consideration of the charge.

Even after the enquiry report of the CJM, the learned Special Judge did not take any steps to dispose of the bail application, which is still pending with the observation that the bail application will be considered after consideration of the charge and accordingly fixed the date on 07.02.2024 for hearing of the petition for bail. Challenging the said observation made by the learned Special Judge, vide order dated 03.01.2024 and 09.01.2024, the present petition has been filed seeking direction to the learned Court below for expeditious disposal of the bail application wherein the ground for mental illness of the accused petitioner was taken.

In this context, Mr. D. Das, learned Addl. PP has submitted that the bail application is fixed for hearing on 07.02.2024 and hence, the matter may be fixed after 07.02.2024 to know about the order passed in the said Bail Application.

Hence, at this stage, there may not be any direction to the concerned Court below for expeditious disposal of the bail application.

After considering the submissions of the learned counsel for the parties, I have perused the orders passed by the learned Special Judge and the learned CJM and also perused the enquiry report.

From the enquiry report of the learned CJM, it is seen that all necessary formalities were observed and the medical Board was duly constituted for examination of the accused petitioner. And accordingly after receipt of the report from the Medical Board, the learned CJM, Dima Hassao, Haflong passed detailed orders on enquiry wherein it has been held that the enquiry has been made under Section 382 Cr.P.C. It is seen that "Mrs. KIMI RALSUN is currently suffering from mental unsoundness and the original report has already been

sent to the learned Sessions Judge, Dima Hassao. But in the order passed by the learned Special Judge, Dima Hassao on 09.01.2024 it is seen that the learned CJM has not furnished the enquiry report before the Special Judge. Further, no order is also enclosed alongwith the petition as to whether the learned District & Sessions Judge, Dima Hassao had received the enquiry report submitted by the learned CJM. But, it cannot be denied that as per enquiry report conducted by the learned CJM, it is seen that the present accused petitioner is suffering from mental unsoundness and is not in a position to face a trial and she is still under treatment for her mental illness.

So without coming to the merit of the case, I hereby direct the learned CJM, Dima Hassao to place the enquiry report before the learned Sessions Judge, Dima Hassao as well as the learned Special Judge, Dima Hassao to consider the case of the present petitioner and accordingly learned courts below shall pass necessary order in compliance with the provisions of Sections 328/329/ 330 Cr.P.C.

Copy of this order be accordingly sent to the learned District and Sessions Judge as well as the learned Special Judge, Dima Hassao.

With the above observation, this petition stands disposed of.

JUDGE

Comparing Assistant