

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

AB No.28 of 2025 with
Crl M.C. No.34 of 2025

Thangkhomang Chongloi

... Petitioner

-Versus-

O/C Women P.S Chandel & Anr

... Respondents

**BEFORE
HON'BLE MR. JUSTICE A.GUNESHWAR SHARMA**
18.12.2025

Heard Mr.Serto T.Kom, learned counsel for the petitioner and Mr.Y.Ashang, learned PP assisted by Mr.Phungyo Zinkhai, learned Dy.GA for the State respondents.

The petitioner is an accused in FIR No.02(6)2025 WPS-CDL U/S 4 & 8 POCSO Act, 2012 corresponding FIR No.00(6)2025 MRH-PS U/S 4 & 8 POCSO. It is stated that the petitioner, who is an accused in the above FIR is aged about 75 years and earlier anticipatory bail application has been rejected by the learned Spl.Judge, POCSO Imphal West. Upon that the petitioner approached this Court for anticipatory bail along ad-interim bail for facilitating him to undergo DNA finding to establish his innocence during trial.

During pendency of the present case, vide order dated 9.9.2025 passed by the learned Special Court, POCSO, Imphal West in Cril Misc Case No.127 of 2025, victim was found to be an adult and hence, matter was referred to Chief Judicial Magistrate, Chandel for proceeding as per law. Thereafter, petitioner has also filed an application, before the learned Chief Judicial Magistrate, Chandel being Cril Misc Case No.48 of 2025 under Section 52 r/w 184 BNSS, 2023 prayer for medical examinations including DNA test of the

applicant/accused, alleged victim and the alleged child (conceived) and the application is pending till date.

Mr.Serto T.Kom, learned counsel for the petitioner submits that even though bail application has been filed in the month of August, 2025, no interim protection has been granted to the petitioner and is still under no custody.

It is submitted that in order to facilitate medical examination including DNA test, the accused is seeking interim protection from this Court for a limited period and he will comply with all the conditions imposed by this Court.

Mr.Y.Ashang, learned PP has pointed out that for medical test of an accused under Section 52 of the BNSS (53 A) Cr.P.C the basic requirement is that the petitioner should be under arrest or in custody but the petitioner is a free man.

Mr.Serto T.Kom, learned counsel for the petitioner submits that in a similar situation, for the purpose of recording deposition statement of an accused under Section 27 of the Evidence Act, the requirement is that the accused should be in Police custody. The question arose in the case of **Sushila Aggarwal & Ors Vs State (NCT of Delhi) & Anr: (2020) 5 SCC 1** in para 85.7, five Judge, Constitution Bench of the Hon'ble Supreme Court has answered that a person on anticipatory bail under Section 438 of Cr.P.C can be subjected to disclosure statement under Section 27 of the Evidence Act and during that process an accused shall be treated under deemed custody for the purpose of Section 27 of the Evidence Act.

Mr.Serto, fairly concedes that there is no case law on the question of conducting medical examination of an accused who is not under custody within the meaning of Section 52 of the BNSS or under Section 53 A of the Cr.P.C. However he draws parity on the decision of **Sushila Aggarwal & Ors** of the Hon'ble Supreme Court on deemed custody of a person on anticipatory bail for the purpose of recording statement under Section 27 of the Evidence Act. By applying the same

principle, the petitioner, if granted interim protection for a limited period, he may be subjected to medical examination as contemplated under Section 52 of the BNSS, treating this period deemed custody and giving interim protection during that period may not be illegal.

This Court considered the materials on record and considering the petitioner being aged about 75 years and his endeavour to prove his innocence by conducting medical examination of himself, petitioner is given interim protection for a period of twenty days, for the purpose of limited medical examination, subject to the following conditions:

- i) Petitioner shall furnish a personal bond of Rs.1 lakh with one surety of the like amount (government employee) to the satisfaction of the I.O ;
- ii) Petitioner shall not leave station without leave of learned Special Judge, POCSO, Chandel.

It is made clear that interim protection shall be valid for only twenty days and it is granted only to facilitate medical examination of the accused including DNA test, if required.

The petitioner shall appear before the I.O., on or before 22.12.2025. The period of twenty days will commence from the day of appearance before the I.O.

Registry is directed to furnish a copy of this order to learned counsel appearing for the parties in course of the day and also sent a copy of this order to learned CJM, Chandel as well as O/C Women Police Station, Chandel.

Cril M.C No.34 of 2025 is closed.

List the remaining application on 16.1.2026.

JUDGE

Priyojit