



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 2 of 2025

Date of Decision: 27.03.2025

Shri. Letten Momin,
S/o P. Momin,
R/o Village Nongchram, Williamnagar,
East Garo Hills District, Meghalaya.

.....Petitioner

- Vs-

1. The State of Meghalaya represented by
The Superintendent of Police,
East Garo Hills District,
Williamnagar, Meghalaya.
2. The Officer-in-Charge,
Women P.S. Williamnagar,
East Garo Hills District,
Meghalaya.
3. Shri. Sing Sangma,
S/o (L) B.B. Marak,
R/o Danal Suregittim,
P.O & P.S Rongjeng,
East Garo Hills District,
Meghalaya.

.....Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge



Appearance:

For the Petitioner/Appellant(s) : Ms. D.F. Mawrie, Adv.

For the Respondent(s) : Mr. A.H. Kharwanlang, Addl. PP.
Mr. S. Sengupta, Addl. PP. for R 1 & 2.
None for R 3.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
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ii)	Whether approved for publication in press:	Yes/No
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JUDGMENT AND ORDER (ORAL)

1. Heard Ms. D.F. Mawrie, learned counsel for the petitioner.

2. Also heard Mr. A.H. Kharwanlang, learned Addl. PP for the State respondent Nos. 1 & 2.

3. As noticed earlier, the respondent No. 3, who is the complainant herein, has failed to appear before this Court inspite of notice being issued. Accordingly, matter shall proceed ex-parte against such respondent.

4. The brief facts of the case leading to the filing of this application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 is that the accused person, Shri. Behar K. Sangma, who is the brother-in-law of the petitioner, was implicated in connection with Special (POCSO) Case No. 2 of 2022 under Section 6 of the POCSO Act pending trial before the learned Special Judge (POCSO), East Garo Hills District, Williamnagar.



5. The learned counsel for the petitioner submits that on the basis of an FIR dated 25.02.2022 lodged before the Officer-in-Charge, Williamnagar Women P.S, wherein allegation has been made against the accused in question that he has committed penetrative sexual assault upon the minor niece of the complainant, for which action against the relevant provision of law is to be sought to be taken against him.

6. The learned counsel has also submitted that the accused person was arrested on 25.02.2022 itself, and is still in custody till date. The Investigating Officer, in course of investigation, had come to the conclusion that a strong prima facie case is well made out against the accused person, for which he is made to stand trial under the relevant provisions of law, particularly under the POCSO Act. The stage of the case at present is for recording of evidence, wherein out of ten cited witnesses, seven of them have given their statements before the court and were discharged accordingly.

7. It is the submission of the learned counsel that the last date fixed for the matter was on 24.03.2025, however, on the said date, the Investigating Officer has made a prayer before the court to conduct a paternity test upon the accused person. Since the case of the prosecution is that, as a result of the sexual assault perpetrated against the minor survivor, she was impregnated and has given birth to a child. Hence, the prayer.



8. The learned counsel, however, has stressed on the fact that, since investigation in the case is completed, the statement under Sections 161/164 Cr.P.C of the relevant witnesses including the survivor and the accused person have also been recorded. Therefore, there is no scope for the accused person to either tamper with the evidence or witnesses at this point of time. While referring to the well-entrenched principle of personal liberty in situation of this kind, wherein a person is incarcerated in custody, thus, depriving him of his personal liberty as enshrined under Article 21 of the Constitution of India, therefore, at this point of time, the accused person may be enlarged on bail with any conditions deemed fit and proper to be imposed by this Court, employing the principles of 'Bail and not Jail'.

9. Per contra, Mr. A.H. Kharwanlang, learned Addl. PP appearing on behalf of the State respondent Nos. 1 & 2, while opposing the prayer made by the learned counsel for the petitioner, has laid stressed on the fact that the evidence recorded so far, has revealed the complicity of the accused person which has not been contradicted or refuted in the evidence, particularly as regard the statement of the survivor herself, who has cited instances of not only one, but about four of them where the accused person had committed the offence on her person.

10. The learned Addl. PP has also submitted that the



perpetrator/accused person, being the uncle of the survivor, the same has assumed significance as far as the nature and gravity of the offence is concerned, apart from the fact that the accused person is residing within the vicinity of the residence of the survivor. Therefore, it would not be proper for the accused person to be enlarged on bail till conclusion of the trial.

11. This Court has given due consideration to the submission made by the learned counsels for the parties, and would reiterate that the principle of criminal jurisprudence as far as bail is concerned, as submitted by the learned counsel for the petitioner is, 'Bail and not Jail'. However, it need not be reminded that, while considering the question of grant or non grant of bail, certain principles, factors and parameters or guidelines as was given by the Hon'ble Supreme Court in a catena of judgments regarding the principle of bail jurisprudence, the trying court has to take into account including the nature and gravity of the offence, the punishment to be imposed, if convicted, the antecedent of the accused person and such other relevant factors.

12. On perusal of the materials on record including the deposition of the survivor, this Court, is convinced that prima facie, a case has been made out against the accused person, considering the fact that there is no denial that he had committed the offence. However, this is not the conclusive evidence since the whole body of evidence has to be appreciated by the learned Trial



Court at the conclusion of the trial.

13. Be that as it may, as to the antecedent of the accused person, again, there is no denial that he is the paternal uncle of the survivor, and this by itself, would invoke strong emotive reaction especially in a conservative society that we are living in.

14. Another consideration that has weigh before this Court is that there are ten witnesses cited, and seven of them have already deposed before the court. Thus, the question of delay in trial cannot be taken as an excuse.

15. On an overall consideration of the facts and circumstances of this case, this Court is not inclined to allow the prayer made in this petition. The petition is accordingly dismissed as devoid of merits.

16. Before parting, this Court, would request the Trial Court to proceed with the trial expeditiously. If after a lapse of one month or two months' time, the trial is not completed, the accused person is at liberty to approach this Court for fresh consideration of his prayer.

17. In view of the above, this petition is disposed of accordingly.

Judge