



Serial No.08 & 09
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Petn. No. 10 of 2025

Date of Order: 04.08.2025

1.Shri. Joshua Nongshli
 S/o Shri. L. Khongtim
 R/o Saiden Nongpoh,
 Ri Bhoi District,
 Meghalaya.

Vs. 1. The State of Meghalaya,
 Represented through Secretary and
 Commissioner, Home Police
 Department, Government of
 Meghalaya.

2. The Superintendent of Police
 Ri Bhoi District, Meghalaya.

.....Petitioner.

.....Respondents.

Crl. Rev. Petn. No.3 of 2025

1.Shri. Joshua Nongshli
 S/o Shri. L. Khongtim
 R/o Saiden Nongpoh,
 Ri Bhoi District,
 Meghalaya.

Vs. 1. The State of Meghalaya,
 Represented through Secretary and
 Commissioner, Home Police
 Department, Government of
 Meghalaya.

2. The Superintendent of Police
 Ri Bhoi District, Meghalaya.

.....Petitioner.

.....Respondents.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioners/Appellant(s) : Ms. S. Nongsiej, Adv.

For the Respondent(s) : Mr. H. Kharmih, Addl. PP



JUDGMENT AND ORDER (ORAL)

These two cases are taken up together for disposal. In Criminal Petition No. 10 of 2025, the petitioner has made a prayer for quashing of the FIR dated 18-08-2023 in Special POCSO Case No. 37/2024 pending before the Special Judge (POCSO), Nongpoh. Whereas, the Criminal Revision Petition No. 3 of 2025 stands filed by the petitioner against the impugned order dated 28-02-2025 passed by the Special Judge (POCSO) Nongpoh in the same case i.e. Special POCSO Case No. 37/2024 whereby the prayer of the petitioner for discharge was rejected. As relief claimed for in both the cases are effectively the same, the matters were tagged together and are disposed of by a common order.

1. The FIR dated 18-08-2023 was lodged before the Officer-in-Charge, Women Police Station, Nongpoh alleging that the minor granddaughter of the complainant, who was mentally unstable, had been sexually assaulted resulting in a case of pregnancy. In course of investigation the petitioner was arrested and after completion of the investigation, a charge-sheet has been filed against the petitioner which is now pending trial in Special POCSO Case No. 37/2024 u/S 3(a)/4/5/6 POCSO Act. The petitioner had prayed for his discharge before the Trial Court by filing an application, which, however, was rejected by order dated 28-02-2025.

2. Ms. S. Nongsiej, learned Counsel appearing for the petitioner submits that there is no allegation against the petitioner in the FIR dated 18-08-2023 and the survivor as well as the complainant also did not make any accusation against the petitioner in their respective statements recorded u/S 164 Cr.PC. She submits that there is no evidence on record remotely



suggesting involvement of the petitioner in the alleged crime and even if the evidences placed in the charge-sheet be taken at their face value, no *prima facie* case is made out against the petitioner. The learned Counsel contends that the statement of the survivor and the complainant recorded u/S 164 Cr.PC are contradictory to each other and the ground on which the petitioner was arrested stood negated by CFSL report which clearly indicated that the petitioner was not the bio-logical father of the child born to the survivor. She submits that the Test Identification Parade (TIP) conducted during the investigation was not done in accordance with the established norms of law. She submits that the identification of the petitioner by the survivor has no legal bearing in the case as they are residing in the same village and that TIP is not substantive evidence and cannot be a basis for proceeding against the petitioner in the criminal case. In support of her contention, the learned Counsel places reliance on the decision of the Apex Court in *State of Haryana Vs. Bhajan Lal and Ors.*, AIR 1992 SC 604.

3. Further, assailing the order dated 28-02-2025, the learned Counsel for the petitioner submits that the Trial Court has committed a gross error by not considering the CFSL report contained in the supplementary charge-sheet. She contends that the Trial Court has erred in placing reliance on the case diary against the settled principle of law and submits that case-diary is not evidence and that the accused has no access to it and, hence, the same could not have been relied on by the Trial Court to reject the prayer of the petitioner for discharge. In addition, the learned Counsel submits that while considering the prayer for discharge, the Trial Court can consider only the documents which are part of the charge-sheet and cannot rely on any other materials which is not the part of charge-sheet. She submits that the observation of the Trial Court that the petitioner was identified by the



survivor after she saw his picture on the mobile of the complainant is nowhere provided in the charge-sheet and the impugned order dated 28-02-2025, as such, is not tenable in law. To buttress her argument, the learned Counsel has relied on the decision of the Apex Court in *Rajnish Kumar Biswakarma Vs. State of NCT of DELHI & Anr., Special Leave Petition (Criminal) No. 5290/2024*.

4. Mr. H. Kharmih, learned Addl. PP, on the other hand, submits that the allegation in the FIR clearly constitutes the commission of a cognizable offence and the investigation thereon and the materials collected discloses a clear *prima facie* case against the petitioner. He submits that the identity of the petitioner came to light when the survivor saw his photo in the mobile phone of the complainant and, subsequently, identified the petitioner in the TIP. He also submits that the materials on record disclosed that the survivor informed the complainant that the perpetrators were two adults, one with beard and the other without. The learned Addl. PP further submits that at the stage of consideration of discharge and framing of charge, the Trial Court is required to see if there is a *prima facie* case against the accused and the defence of the accused is not to be looked into. In support of the contention, he places reliance on the various decisions of the Apex Court reported in (2023) 17 SCC 688, (2014) 11 SCC 709, (2012) 9 SCC 460, (2010) 9 SCC 368, (2008) 2 SCC 561, (2002) 2 SCC 135, (1979) 3 SCC 4 and (1977) 4 SCC 39. The learned Addl. PP submits that reference to the case-diary by the Court to find out as to the availability of the *prima facie* material at the stage of framing of charge is not barred by law. He submits that the Court can consider the case-diary to assess the evidence and determine if there is sufficient ground to proceed with the trial. In support of the submission, he places reliance on the decision of the High Court of Patna in 2018 SCC Online Pat 2189: *Guddu Sharma-vrs- State of*



Bihar & Anr. He, therefore, submits that there is no merit in the contentions raised on behalf of the petitioner and both the petitions are liable to be dismissed.

5. Heard learned Counsel for the parties and perused the materials available on record. There is no dispute to the settled proposition that the charge can be framed if *prima facie* material is available against the accused in a trial. In the instant matter, the learned Trial Court in its order dated 28-02-2025 has taken into consideration the materials which are made part of the charge-sheet. The statements of the survivor as well as the complainant recorded u/S 164 Cr.PC reveal that two adult men, one with beard and other without beard, were involved in the commission of the alleged offence against the survivor. During the course of the investigation, TIP was conducted wherein the petitioner was identified by the survivor.

6. The contention of the learned Counsel for the petitioner that the TIP has no legal bearing as the petitioner was already known to the survivor being a resident of the same village where survivor resides, can only be established by adducing evidence at the trial. The availability of direct evidence in this regard will come to light only after the evidence of the prosecution witnesses is recorded by the Trial Court. This Court, at this juncture, cannot come to a conclusion that the prosecution will not be able to establish its case before the Trial Court.

7. As regards the question as to whether the Trial Court could have taken into consideration the case-diary while rejecting the prayer of discharge of the petitioner, it is seen from the impugned order dated 28-02-2025 that the Trial Court had only perused the case-diary in order to satisfy itself as to the availability of legal evidence and not beyond. Under sub-Section (2) of Section 172 Cr.PC, the Court has the unfettered power to use case-diaries, not as evidence in the case, but to aid it in inquiry or trial by



suggesting means of further elucidating points which need clearing up and which are material for the purpose of doing justice. It is a settled position of law that there can be no better custodian or guardian of the interest of justice than the Court trying the case. A mere reference to the case diary at the stage of framing of charge without treating it to be a piece of evidence cannot be termed as illegal as it does not cause any prejudice to the accused. The decision of Guddu *Sharma (supra)* cited by the learned Addl. PP also shows that the case-diary was considered by the High Court of Patna while dealing with the question of discharge and framing of charge.

8. Insofar as, the question of non-consideration of report of the Central Forensic Science Laboratory (CFSL) by the learned Trial Court is concerned, the DNA report contained in the supplementary charge-sheet stating that the petitioner is not the bio-logical father of the baby born to the survivor does not exonerate the petitioner from the liability of the case at this juncture in view of the allegation that the sexual offence against the survivor was committed by two persons.

9. In the case of *Rajnish Kumar Biswakarma (supra)*, the Apex Court was dealing with a matter where the Trial Court was directed by the High Court to take into account the decree of nullity as well as appeal preferred by the second respondent therein while hearing the argument on charge. It was in that context, the Apex Court held that while considering the prayer for discharge, the Trial Court cannot consider any document which is not the part of the charge-sheet and, hence, the direction of the High Court was interfered with. However, such a situation is not there in the present case. The Trial Court while passing the order dated 28-02-2025 did not take into consideration any document which is not part of the charge-sheet.

10. Since, the statement of the complainant and the survivor recorded u/S 164 Cr.PC and the purported identification of the petitioner by the



survivor in the TIP make out a *prima facie* case for trial, the instant case does not come under the purview of categories of cases mentioned in paragraph 108 of the *Bhajan Lal (supra)* case.

11. In view of the discussions made above, there is no merit in the contentions raised on behalf of the petitioner. Resultantly, both the petitions i.e. Criminal Petition No. 10 of 2025 and the Criminal Revision Petition No. 3 of 2025 are hereby dismissed.

Judge

Meghalaya.
04.08.2025
"Biswarup PS"