



Serial No.07
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. M.C. No.20 of 2025 in
Crl. Petn. No. 10 of 2025

Date of Order: 28.04.2025

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

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

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

.....Applicant.

.....Respondents.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Applicant(s) : Ms. S. Nongsiej, Adv.
For the Respondent(s) : Mr. H. Kharmih, Addl. PP
Mrs. S. Bhattacharjee, GA.

ORAL:-

Heard Ms. S. Nongsiej, learned Counsel appearing for the applicant and also Mr. H. Kharmih, learned Addl. PP appearing for the State-respondent.

By this application, the applicant has prayed for stay of the proceeding in Special POCSO Case No. 37 of 2024 under Section 3



(a)/4/5/6 POCSO Act, 2012 pending before the Special Judge (POCSO), Nongpoh Ri Bhoi arising out of FIR No. 50 (8) 2023.

Ms. S. Nongsiej, the learned Counsel appearing for the applicant submits that the allegation set out in the charge-sheet does not constitute any offence against the applicant. She submits that except for saying that there is reliable source of information against the applicant, there is nothing incriminating against the applicant in the charge-sheet. She contends that the finding in the FSL report dated 06-01-2025 that the applicant is not the biological father of the male boy delivered by the survivor clearly exonerates the applicant from the allegation made in the case. The learned Counsel further submits that the entire prosecution case is based on the Test Identification Parade (TIP), which is not at all a substantive piece of evidence. It is the further contention of the learned Counsel that the survivor and the applicant reside in the same area and, hence, the TIP cannot be an acceptable evidence in the eye of law. She submits that the trail against the applicant would not serve any meaningful purpose and prays for stay of the same till the disposal of the main criminal petition.

Mr. H. Kharmih, learned Addl. PP. for the State-respondent, on the other hand, strongly objects to the contentions raised on behalf of the applicant and submits that the applicant is named as a prime accused in the charge-sheet. He further submits that there is nothing on record to show that the applicant and the survivor are known to each other and in that view of the matter, no illegality can be attached to the TIP at this stage. He submits that the question of existence of direct evidence against the applicant can only be determined after the testimony of the witnesses are recorded by the Trial Court in the matter. The learned Addl. PP further submits that the survivor in her statement made during the investigation has



clearly stated that there were two persons involved in the matter. He contends that the FSL report dated 06-01-2025 does not in any way come to the rescue of the applicant at this stage as the question of paternity is not the only determinative factor on which the prosecution case rests in the matter. He submits that no case has been made out for stay of the trial against the applicant.

Upon hearing the learned Counsels appearing for the parties and on perusal of materials on record, it is found that the survivor in her statement under Section 164 Cr.PC stated that two persons committed sexual offence against her. It also appears that the applicant herein is identified by the survivor in the Test Identification Parade conducted during the course of investigation. Further, the order dated 28-02-2025 of the Trial Court projects that the applicant was identified by the survivor after she saw his picture in the mobile phone of the complainant and informed the complainant that the applicant was the perpetrator and thereafter the applicant was arrested on 26-08-2024. That apart, since there is more than one accused in the matter, the FSL report is also of not much help to the applicant, as it does not prove the innocence of the applicant at this stage insofar as the allegation of commission of sexual offence is concerned.

The learned Counsel for the applicant has placed reliance on the decision dated 08-07-2024 of the Apex Court in *Criminal Appeal No.1473 of 2024, P. Sasikumar Vs. The State Rep. by the Inspector of Police* to contend that the TIP is not substantive evidence. While there is no quarrel with the said proposition, it cannot be said at this stage that the prosecution case in the matter is solely dependent on the TIP and there is no other direct evidence.



In view of the above, the prayer for stay of the proceeding in
Crl.M.C. No. 20/2025 stands rejected.

Judge

Meghalaya
28.04.2025
"Biswarup PS"

