



Serial No. 02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 34 of 2025

Date of Decision: 11.07.2025

Smti. Shito Pohshna,
D/o Shri. Barmit Mukhim,
Aged about 66 years,
R/o Padu Bah Village,
West Jaintia Hills District,
Meghalaya.

.....Petitioner

VERSUS

1. The State of Meghalaya,
Represented by Superintendent of Police,
West Jaintia Hills District,
Meghalaya.
2. XYZ,
(Complainant)

.....Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. R. War, Adv.

For the Respondent(s) : Mr. K. Khan, P.P with
Mr. A.H. Kharwanlang, Addl. P.P
Mr. S. Sengupta, Addl. P.P

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |



JUDGMENT & ORDER (ORAL)

1. Heard Mr. R. War, learned counsel for the petitioner. Also heard Mr. K. Khan, learned P.P.

2. At the outset, the learned P.P has submitted that this Court vide order dated 02.07.2025 has directed the IO to cause notice to be served upon the respondent No. 2/complainant and to file the compliance report by way of an affidavit-of-service. However, the learned P.P has submitted that though the said affidavit-of-service is ready, the same could not be filed before this Court and as such, it is prayed that this Court may allow the same to be filed in course of the day. The learned P.P has further submitted that on perusal of the affidavit-of-service it is evident that the said notice has been duly affected and the IO has also interacted with the complainant and has given him the option to either engage a counsel of his own or to resort to legal aid, if so desired. It is the desire of the complainant that because of his situation he may not be able to engage a private counsel and would rather depend on the learned P.P to also take up his course at the hearing. As such, the IO is allowed to file the affidavit-of-service in course of the day. Though an informal copy of the same has been produced before this Court, it would be sufficient for this Court to take note of the same, more so on the basis of the submission made by the learned P.P.

3. Coming to the merits of this case, the learned counsel for the petitioner has reiterated that the main thrust of the petitioner's contention is that her accused son who was arrested in the first instance in connection with Amlarem P.S. Case No. 09(10)2022 under Section 5(m)(n)/6 POCSO Act has been in custody since the day he was arrested, that is, 21.10.2022. It is now about two years and nine months or so that he is in custody. In the



meantime, trial has proceeded with the IO filing the charge sheet. The learned Special Judge (POCSO), West Jaintia Hills District, Jowai has taken cognizance of the same and thereafter, Special POCSO Case No. 7 of 2022 has been registered with the son of the petitioner as the accused person with charges framed on 03.05.2023. Altogether there are about 17 listed prosecution witnesses where 12 witnesses have been examined and discharged. The survivor was also examined as PW-4 on 13.11.2023. The IO who is suppose to take the witness stand was however not yet examined in court as it is reported that she is on maternity leave since the month of May, 2025. This being the case, the learned counsel has submitted that because of the time taken for the proceedings to be completed, wherein the accused/son of the petitioner has already undergone incarceration for a very long period of time, the case of the prosecution not likely to be completed within the next one or two months, therefore on this ground alone, the petitioner has prayed that the accused may be enlarged on bail with any conditions that may be deemed fit and proper to be imposed.

4. Again, the learned counsel has submitted that even if Section 35 of the POCSO Act, 2012 is taken into consideration as far as the facts and circumstances of this case is concerned, the provision is very clear that at the first instance, the evidence of the child/survivor has to be recorded within a period of 30 days and thereafter for the trial to be completed within a period of 1(one) year from the date of taking cognizance of the offence. This has not happened in this instant case as a result of which the trial has proceeded beyond the 1(one) year stipulated period. Though the learned counsel has fairly admitted that this Court as well as the Hon'ble Supreme Court has held in a number of cases that the period of 1(one) year stipulation in Section 35 is not mandatory but obligatory, depending on the facts and



circumstance of a particular case, be that as it may, as has been submitted, the fact that there is no possibility of the trial being concluded in the very near future, the valuable rights of the accused as far as his personal liberty is concerned with reference to the provision of Article 21 of the Constitution of India has been denied to him. Therefore, he is entitled to approach this Court with the relief prayed for. It is therefore, prayed that this petition may be allowed.

5. The learned counsel has also submitted that he is competent to give an undertaking on behalf of the accused person, that if enlarged on bail, he shall relocate himself from his present residence, which is located near the residence of the survivor and shall reside at Lumpangad Village, West Jaintia Hills District, Meghalaya which is 35 km away from his present residence, that is, Padu Bah Village, West Jaintia Hills District, Meghalaya.

6. Per contra, Mr. K. Khan, learned P.P has submitted that the facts and circumstances of this case would reveal that the case involve a minor who is of very tender age and that the offence perpetrated upon her is by none other than the person who is closely related to her, being her uncle.

7. It can well be understood that she is undergoing an extremely traumatic phase at present and as has been pleaded by the complainant who is the father of the survivor, it would not be proper or justified to allow the accused person to be released on bail at this point of time more so, when the survivor has clearly indicated in her statement the fact that the accused person has indeed committed aggravated sexual assault upon her person.

8. Even taking into consideration the impact and import of Section 35 of the POCSO Act in the case of the accused person as well as the alleged rights as has been canvassed by the petitioner, this Court would do well to



balance the intervening factor, that is, societal interest and conscience on one hand with that of the liberty of the accused on the other hand.

9. It is also the submission of the learned P.P that this Court in many cases where the issue of the application of Section 35 has been raised, taking into consideration the peculiar facts and circumstances of each case in isolation, has more often than not leaned towards societal interest and the interest of the survivor concerning her personality.

10. Finally, the learned P.P has submitted that this case has no merits at this point of time, the same may be dismissed as such.

11. This Court has carefully considered the argument and the contention canvassed by the learned counsel for the rival parties. Facts of the case may not be reiterated since the same have been indicated hereinabove.

12. The fact that the accused person has been in custody for a very long time, that is, two years and nine months or so has not been denied by the prosecution or is contrary to the records. The facts that proceedings are ongoing would also dilute the point raised by the learned counsel for the petitioner as far as the delay in trial is concerned.

13. It is also well settled that that when consideration of bail by a court is taken up, the issue of seriousness and nature and gravity of the offence alleged as well as the length of punishment involved has to be taken into consideration. All these are present in the facts and circumstances of this case. However, this Court is also not to lose sight of the fact that as far as the POCSO Act is concerned, there is no stringent provision as regard bail as is found in some other Acts, for example, under Section 37 of the NDPS



Act for which the concept of bail to an accused person is considered on his being presumed to be innocent until proven guilty, but is applied in the reverse under such provision. However, generally, it can be said that bail is always a right to which every accused person, particularly an under trial is entitled to, subject to the discretion of the court. Herein, the principle of bail and not jail comes into effect.

14. There is no doubt that the proceedings in the case under consideration is at the stage of recording of evidence of the prosecution witnesses which means that investigation stage is over, charge sheet have been filed, practically custodial questioning of the accused is no longer required. In such a circumstance, this Court would, as has been done so time and again, rely on the off repeated authority of the Hon'ble Supreme Court in the case of Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40 wherein at para 21 the following has been observed:

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.”

15. Again, coming back to the case in hand, taking into account the sensitive nature and condition of the survivor, it would be but proper to observe that she should have been or given proper counselling even at this point of time. If not done so, the trial court is directed to ensure that the same is complied with. It is also the considered opinion of this Court as far as this particular case is concerned, that the accused may be allowed to



present his defence in an atmosphere which would be congenial to him.

16. Accordingly, on the basis of the observations made hereinabove, this Court is persuaded to allow the prayer made in this petition.

17. The accused person is directed to be released on bail on the following conditions that:

- i. He shall not abscond or tamper with the evidence or witnesses;
- ii. He shall not leave the jurisdiction of Meghalaya without prior permission from the court concerned;
- iii. He shall bind himself on a personal bond of ₹ 20,000/- (rupees twenty thousand) only with one surety of like amount to the satisfaction of the court concerned;
- iv. As agreed to by the accused person, he shall not come into contact with the survivor whatsoever during the pendency of the trial and shall relocate himself to the place called Lumpangad Village, West Jaintia Hills District, Meghalaya until such time the Trial Court decides otherwise.

18. This petition is accordingly disposed of.

Judge