



Serial No. 05
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 75 of 2024

Date of Decision: 04.02.2025

Shri. Joshua Nongshli,
S/o Shri. Landing Khongtim,
R/o Patharkmah,
Ri-Bhoi District,
Meghalaya

.....**Petitioner**

- Vs-

1. The State of Meghalaya,
represented through Secretary and
Commissioner, Home Police
Department, Government of Meghalaya.
2. The Superintendent of Police,
Shillong, East Khasi Hills District,
Meghalaya.
3. Smti. Bisbera Syiemiong,
W/o (L) E. Rijeer,
R/o Iewsier Village,
Saiden Nongpoh,
Ri-Bhoi District.

.....**Respondents**

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge



Appearance:

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

For the Respondent(s) : Mr. K. Khan, PP with
Mr. H. Kharmih, 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
ii)	Whether approved for publication in press:	Yes/No

JUDGMENT AND ORDER (ORAL)

1. Heard Ms. S. Nongsiej, learned counsel for the petitioner/accused, who has submitted that this application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 read with Section 31 of the POCSO Act, 2012 has been filed with a prayer for grant of bail on behalf of the petitioner/accused, who was arrested on 27.08.2024 on the strength of an FIR dated 18.08.2023 lodged by the respondent No. 3, who is the complainant herein.

2. The matter involved an offence under the POCSO Act, wherein the minor granddaughter of the complainant is said to have been sexually assaulted resulting in a case of pregnancy. The truth of the matter being known only when the minor survivor complaints about stomach pain where she was then taken to the hospital to conduct further medical test. However,



on being examined, it was found that she was pregnant, and soon after, the minor survivor then related the incident which had taken place about one year or so before the said examination was conducted. Accordingly, an FIR was formally lodged before the concerned Police Station, and a case was registered under the relevant provisions of the POCSO Act.

3. In course of investigation, the petitioner/accused was arrested, and on the investigation being completed, the Investigating Officer had filed the charge sheet, finding a prima facie case well-established against the petitioner/accused herein. The stage of the case is for consideration of charges.

4. It is the contention of the learned counsel that the petitioner/accused is not at all involved in the commission of such offence, more so, when the contents of the FIR did disclose the name of the petitioner as the perpetrator. In fact, from the statement of the survivor, what transpired is that, she was allegedly sexually assaulted by two unknown persons, who were wearing mask at the time when the offence was committed. Accordingly, the petitioner/accused has not been identified or specifically named by the survivor or by the complainant for that matter. The only ground taken by the arresting authority is that the child born to the survivor



resembled the petitioner which cannot be the ground for his arrest in any view of the matter.

5. The fact that the petitioner/accused has been in custody for a prolonged period of time, it is prayed that he may be enlarged on bail with any conditions to be imposed by this Court, so as to enable him to defend his case properly before the Trial Court.

6. Per contra, Mr. K. Khan, learned PP assisted by Mr. H. Kharmih and Mr. S. Sengupta, learned Addl. PP for the State respondent Nos. 1 & 2 has submitted that the case is one which is serious in nature involving sexual assault upon a minor girl. The fact that the petitioner/accused was said to be involved as far as the offence is concerned, is that the survivor had identified him during the Test Identification Parade (TIP) conducted by the police. The learned PP has also submitted that the charge sheet has already been filed in this case, and as such, the petitioner/accused may not be enlarged on bail at this stage.

7. This Court has given due consideration to the submission made, the facts as stated above, would reveal that the petitioner/accused was arrested on the strength of the said FIR filed by the respondent No. 3/complainant, who incidentally on notice being issued, has failed to appear



before this Court today.

8. Be that as it may, the offence committed is grievous in nature, especially involving a minor survivor, who was 14 years old at that relevant point of time when the incident occurred. Though, this Court would not go into the details as to the statement made by the survivor or the complainant as far as the statement made under Sections 161 and 164 respectively is concerned, but to be fair, it would not be out of place to opine that the petitioner/accused has not been specifically named by the survivor or the complainant as the person responsible for the said offence. It is however a matter of evidence for the actual truth to be revealed, and that aspect of the matter is left open to the Trial Court to take upon such task. At this point of time, this Court is convinced that the petitioner/accused may be allowed to be enlarged on bail to allow him to prepare for his defence effectively, albeit, on assurance that he will comply with the conditions to be imposed. Accordingly, this petition is hereby allowed.

9. The petitioner/accused, Shri. Joshua Nongshli is directed to be released on bail on the following conditions that:

- i) He shall not abscond or tamper with the evidence and witnesses;



- ii) Considering the fact that the petitioner/accused is a neighbour of the survivor, he may relocate himself to another place of residence where he should not come into contact with the survivor whatsoever in course of trial, except, if so warranted or called upon by the court.
- 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 Trial Court; and
- iv) He shall appear before the court as and when required.

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

Judge