



Serial No. 08
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 15 of 2026

Date of Decision: 12.05.2026

Shri. Mozir Uddin
Son of (L) Armin Ali
Aged about 43 years
R/o- Village- Berajal
PO- Nilambazar, District- Karimganj,
Assam-788722

.... Petitioner

- Vs-

1. State of Meghalaya,
Represented by the Superintendent of Police
East Jaintia Hills District, Khliehriat Meghalaya.
2. Shri. X (Complainant)
Through the Officer -in-Charge
East Jaintia Hills District, Khliehriat, Meghalaya.

.... Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

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

Appearance:

For the Petitioner/Appellant(s) : Mr. R. War, Adv. with
Ms. L.P. War, Adv.
Ms. I. War, Adv.

For the Respondent(s) : Mr. Atiar. S. Dey, GA.



JUDGEMENT AND ORDER (ORAL)

1. Heard Mr. R. War, learned counsel, who has submitted that the petitioner has approached this Court by way of this application under Section 483 of the BNSS, 2023 read with Section 31 of the POCSO Act, with a prayer for grant of bail on behalf of his elder brother, Shri Satab Ali, who is an accused, who was arrested on 27.05.2025 in connection with Khliehriat P.S. Case No. 25 (05) 2025 under Section 351 BNS read with Section 5(j)(ii)/5(l)/6 of the POCSO Act, now registered as Spl. POCSO Case No. 24/2025, before the Court of the learned Special Judge (POCSO), East Jaintia Hills District, Khliehriat.

2. The learned counsel has submitted that the genesis of the case stems from an FIR lodged by the respondent No. 3/Complainant who, upon discovering that his paternal cousin, aged about 18 years old is pregnant from the accused brother of the petitioner, whom she alleged that he has forcibly had sexual intercourse with her three times between the months of January-February, 2025, the same which took place at the food stall belonging to the family of the victim/survivor located at Sookilo, and accordingly, necessary action as per law is requested to be taken.

3. As to the happenstance of the alleged forcible sexual act and the ultimate pregnancy of the victim/survivor, the learned counsel has submitted that the accused person has strongly denied that he has ever sexually assaulted her.



Leading this Court to the statement of the survivor made before the police at the first instance, it was pointed out that she has stated that the said act was committed in the month of January, 2025. However, in her statement made before the Magistrate, made on 26.05.2025, she has stated that the incident happened on the third Sunday of March 2025. Again, in her deposition before the Court as PW-2, the survivor has stated that she does not remember the date, month and year when the incident happened, but in her cross-examination, she admitted that all the incidents took place in the month of January. Therefore, there was inconsistency in the statement of the survivor which will only strengthen the case of the accused, submits the learned counsel.

4. The learned counsel has also submitted that even the medical evidence does not support the prosecution's case, inasmuch as, on a bare calculation of the gestational age, the probable conception period would be in the month of February. This has been proved through the Early Pregnancy Scan Report issued by the Woodland WK Hospital, wherein on the basis of the test conducted on 29.04.2025, the findings/impression reads as "*Single live intrauterine gestation corresponding to a gestational age of 9 Weeks 4 Days*". Therefore, as admitted by the survivor, the accused person who has soon left for his village during January, could not have committed or caused the said pregnancy. In this regard, the case of **Arjun Kumar Prasad v. State of Sikkim**,



(Crl.A. No.21 of 2024) was referred to, wherein vide order dated 19.06.2025, the High Court of Sikkim at para 11 has observed as follows:

“11. We find weight in the argument of Learned Counsel for the Appellant that if the victim alleges that the sexual intercourse took place in the month of November and she suffered bleeding due to termination of pregnancy, in the month of December/January, the size of the placenta would have indicated around eight weeks’ pregnancy. In contradiction thereto, PW-4 after medically examining the victim has categorically opined that the size of the placenta indicated pregnancy of twenty-two weeks. In the face of such categorical medical evidence, we cannot conclude that the Appellant caused the pregnancy.”

5. The learned counsel has further submitted that for disclosure of the paternity of the unborn child, DNA test was conducted, however, a report filed by the Junior Scientific Officer (Biology) dated 25.06.2025 would show that due to degradation and/or vary minute amount of DNA isolated, the required result could not be generated, as such, it can be said that the DNA test has returned in the negative.

6. The learned counsel has also questioned the claimed of the prosecution that the age of the victim was 17 years or so, at the time when the alleged incident occurred, since from the beginning, the survivor has given her age as 18 years. On the insistence of the I/O (Investigating Officer), an ossification test was conducted upon the survivor and the report shows that she was between 16-17 years at the time of the incident. Therefore, there is



inconsistency in the statement of the survivor and her testimony cannot be treated as sterling.

7. The next submission of the learned counsel is that as far as the case of the accused person herein is concerned, the period of investigation is over, trial has commenced and the complainant as well as the victim have already been examined in court as PW-1 and PW-2 respectively, as such, it would be futile for the accused person to be incarcerated in custody given the fact that he must be allowed to present his defence in a free and fair atmosphere. If enlarged on bail, the accused will abide by any conditions that this Court may impose.

8. In this regard, the case of **Kheinkor War v. The State of Meghalaya (BA No.3 of 2026)** was referred to, wherein, vide order dated 19.03.2026 in a case involving allegations under the POCSO Act, the prayer for grant of bail have been allowed by this Court under the circumstances, para 12 and 13 of the same which reads as follows:

“12. Though the allegation is serious in nature, however, it is also to be taken into account the fact that an accused person facing trial in a court of law, particularly in criminal offence, is said to be innocent until proven guilty, which, if so, found guilty, would have to face the consequences of conviction and imprisonment.”

13. In the meantime, it may not be necessary for any person or an accused person for that matter to be incarcerated in custody, provided the circumstances are such that, if allowed to be released from custody, he would flee from justice or threaten the witnesses or tamper with the evidence. However, if such an accused person can



assure the court or provide sufficient surety, this aspect of the matter can be taken care of in this respect.”

9. Mr. Atiar. S. Dey, learned GA appearing for the State respondent in counter, has submitted that the contention of the learned counsel for the petitioner, that there is inconsistency in the statement of the survivor as regard the time and date when the incident occurred holds no water, since a perusal of the statement of the survivor made before the police during investigation, the one made before the Magistrate, and finally, the deposition in court during trial has clearly depicted the whole story as it happened, that is, that the survivor was sexually assaulted by the accused on three occasions, and all three falls on a Sunday afternoon. The only slide consistency that may have occurred in course of her narration is with regard to the actual month when the said incidents took place, as before the Medical Officer, she had stated that it took place in the month of January, but somewhere, in her statement before the police, she has stated that it had happened in the month of January, whereas before the Magistrate, she had stated that it took place in the month of March, this can be attributed to the fact that the survivor is going through a traumatic experience and there are bound to be slight inconsistency in her narration. However, the fact that her statement that she was sexually assaulted by the accused person as a result of which she became pregnant, cannot be denied.



10. On the issue of age determination, the learned GA has submitted that admittedly, to determine the age of the victim, the procedure prescribed under Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, pursuant to the provision of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 has to be followed, however, at the inquiry stage, the ossification test has been conducted, wherein, it was found that the victim was about 16-17 years at the time of the incident. It is however, submitted that as far as determination of age is concerned, the same would be a matter for the Trial Court to decide on prayer made in this regard.

11. This Court upon hearing the parties, is made to understand that the accused person in question on being arrested in the month of May 2025, is still in judicial custody while the trial against him is going on in court.

12. The learned counsel for the petitioner has made an endeavour to convince this Court to look into the merits of the case under trial by asserting the accused person is innocent and had not committed the offence alleged. The stand taken by the petitioner is that on the basis of the medical report as regard the gestational age being 9 weeks and 4 days which, according to the petitioner would put the likely period of pregnancy in the month of February 2025, whereas the allegation made by the survivor is that, she was sexual assaulted in the month



of January, therefore it could not have been the accused person who is responsible for such act.

13. It may be reminded that the trial has not yet concluded and all the evidence have not been recorded, as such, at this stage, this Court cannot take such contentions into account, considering the fact that the matter is sub-judice before the Trial Court. Be that as it may, the fact that the survivor has named the accused person who is known to her as the perpetrator, there is therefore, prima facie evidence of such an offence being committed.

14. This Court is also mindful of the fact that the trial is ongoing and there is indeed no requirement of further custodial questioning of the accused person. The fact that the complainant as well as the survivor have also been examined in court and discharged, therefore, there is no further apprehension of the accused person tampering with the evidence and witnesses. The reliance of the learned counsel for the petitioner to the case of **Shri. Khienkor War** (supra) at para 12 and 13 is also found applicable to the case of petitioner herein.

15. It may not be out of place to also refer to the case of **Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40**, wherein at para 21 and 22 the Hon'ble Supreme Court has observed as follows:

“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 is 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.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances."

16. Even without discussion on the implication of the authority cited by the petitioner in the case of **Arjun Kumar Prasad** (supra) which according to this Court would not be relevant at this point of time, this Court, in view of the observations made hereinabove, is inclined to allow the prayer made herein.

17. Accordingly, the accused person in question is directed to be released on bail on the following conditions:

- i) That he shall not abscond or tamper with the evidence or witnesses;
- ii) That he shall attend court as and when called for;



- iii) That he shall not come in contact with the survivor in course of trial without specific direction of the Trial Court, in this regard.
- iv) That he shall not leave the jurisdiction of the State of Meghalaya, except with due permission of the court concerned; and
- v) That he shall bind himself on a personal bond of ₹ 50,000/- (Rupees fifty thousand) only with two local sureties of like amount to the satisfaction of the Trial Court.

18. In view of the above, this petition is disposed of accordingly. No costs.

Judge