



Serial Nos. 04 & 05
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 37 of 2026 with
BA No. 38 of 2026

Date of Decision: 28.07.2026

BA No. 37 of 2026

Shri. Bishelbiang Lawai
Aged about 19 years of age,
S/o Smti Ritilin Lawai,
R/o Mawber Village,
East Khasi Hills District, Meghalaya.

..... Petitioner No. 1

- Vs-

1. State of Meghalaya,
Represented by its Secretary,
Home Police Department,
Govt. of Meghalaya, Shillong.
2. Superintendent of Police,
East Khasi Hills District,
Shillong, Meghalaya.
3. Office In-Charge,
Madanrting Police Station,
Shillong, East Khasi Hills District,
Meghalaya.
4. Smti. Y
Mother of Miss X,
R/o Thynroid,
East Khasi Hills District,
Meghalaya

..... Respondents

**BA No. 38 of 2026**

Shri. Bastowel Lawai
Aged about 22 years of age,
S/o Riksiarlin Lawai,
R/o Mawber Village,
East Khasi Hills District,
Meghalaya.

..... Petitioner No. 2

- Vs-

1. State of Meghalaya,
Represented by its Secretary,
Home Police Department,
Govt. of Meghalaya, Shillong.
2. Superintendent of Police,
East Khasi Hills District,
Shillong, Meghalaya.
3. Office In-Charge,
Madanriting Police Station,
Shillong, East Khasi Hills District,
Meghalaya.
4. Smti. Y
Mother of Miss X,
R/o Thynroid,
East Khasi Hills District,
Meghalaya.

..... Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge



Appearance:

For the Petitioner/Appellant(s) : Mr. S. Thapa, Adv.
Mr. S. Khyriem, Adv.
Mr. T.C.S. Lama, Adv.

For the Respondent(s) : Mr. J. Thabah, GA

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. These two bail applications arose from a common case and with identical facts and circumstances, as such, it is deemed proper and convenient to pass a common judgment and order, which is done so herein.

2. From the records, it is seen that an FIR was lodged before the Officer In-charge, Madanrting Police Station by the respondent No. 4 herein informing the police that on 28.03.2025 at around 7:00 PM or so, her minor daughter aged about 14 years was called by the petitioner herein (Shri. Bishelbiang Lawai) and when she went to meet him on the road one of his friends namely Shri. Bastowel Lawai forced her into a Mahindra Bolero bearing registration No. ML 05-AB-7804 and along with the driver Shri. Ibantailang Kharbihkhiew who forcefully took her to Maw-U-Sam village and from there they took her to the jungle, after forcing her to drink alcohol, Bastowel raped her and fled away.

3. On the police registering the case as Madanrting P.S. Case No. 61(3)



of 2025 under Section 5(g)/6 of the POCSO Act read with Section 137(2)/3(5) BNS, the petitioner No. 1 (Shri. Bishelbiang Lawai) in BA No. 37 of 2026 as well as the petitioner No. 2 (Shri. Bastowel Lawai) in BA No. 38 of 2026 were arrested and firstly, forwarded to police custody and then to judicial custody, where they are still in custody for a period of 443 days or so, after the investigation was launched, charge sheet was filed, the petitioners in these two bail applications were made to stand trial. The stage of the case before the Trial Court is for recording of evidence of the prosecution witnesses.

4. Heard Mr. S. Thapa, learned counsel for the petitioners, who has submitted that the allegation made in the FIR is not correct since the survivor is the girlfriend of the petitioner No. 1 (Shri. Bishelbiang Lawai) as such the alleged sexual act was consensual. This contention also find force in the assertion made by the eye witness who in his statement under 183 of the BNSS made before the Magistrate has stated that he saw the vehicle (pickup) loaded with broom stick and two men probably in the early twenties near the said vehicle. After, walking a little ahead he heard a girl's voice making some noise and when he proceeded towards the source, he saw a man lying on top of the girl and they were having sex, thereafter, he informed the Rangbah Shnong who in turn informed the police. Thereafter the three boys were taken by the police.

5. The learned counsel has however, submitted that the main thrust of the petitioner's argument is the fact that since investigation has been completed,



the charge sheet already filed and the trial is underway with recording of the prosecution witnesses, the survivor having had her evidence recorded as PW-1 and was accordingly discharged, therefore, considering the fact that the petitioners are in judicial custody for more than a year, they may be enlarged on bail with any conditions that this Court may deem fit and proper to impose.

6. In this connection, the case of **Shri. Kheinkor War** was cited, wherein this Court in BA No. 3 of 2026 vide order dated 19.03.2026, had in a similar case allowed the accused person therein to be enlarged on bail, relevant paragraphs of the said order relied upon being para 11, 12 and 13 respectively.

7. Per contra, Mr. J. Thabah, learned GA appearing for the State respondent has opposed the prayer made by the learned counsel for the petitioners on the ground that the offence alleged to have been committed by the petitioners is serious in nature, particularly being sexual assault committed on the survivor and also considering her age, the prayer made for grant of bail may not be allowed. In this regard, the case of **X (minor) v. State of Jharkhand and Anr.**, was referred to wherein vide order dated 21.02.2022 in Criminal Appeal No. 263 of 2022 at para 6, the Hon'ble Supreme Court has observed as follows:

“6. The High Court was manifestly in error in allowing the application for bail. The reason that from the statement under Section 164 and the averments in the FIR, it appears that "there was a love affair" between the appellant and the second respondent and that the case was instituted on the refusal of the second respondent to marry the appellant, is specious. Once, prima facie, it appears from the material before the Court that the appellant was barely thirteen years



of age on the date when the alleged offence took place, both the grounds, namely that "there was a love affair" between the appellant and the second respondent as well as the alleged refusal to marry, are circumstances which will have no bearing on the grant of bail. Having regard to the age of the prosecutrix and the nature and gravity of the crime, no case for the grant of bail was established. The order of the High Court granting bail has to be interfered with since the circumstances which prevailed with the High Court are extraneous in view of the age of the prosecutrix, having regard to the provisions of Section 376 of IPC and Section 6 of POCSO."

8. This Court has considered the submission made by the parties and has also perused the petitions. It is a fact that the case has proceeded to the stage of recording of prosecution witnesses and the evidence of the survivor as PW-1 has also been recorded, therefore, there is no apprehension of the accused tempering with the witnesses at this stage. The fact that the petitioners/accused persons are in custody for more than one year, though not the main relevant consideration, however, they ought to be given ample opportunity to present their defence in a free atmosphere.

9. As to the reliance of the learned GA on the case of X (minor) (supra), this Court would not go into the issue of consent or a pure case of sexual assault as far as the parties herein are concerned, more importantly the stand of the prosecution qua the survivor, but would dwell on the premise of conditions being conducive to the proceedings before the Trial Court to be conducted in fairness to all the contesting parties.

10. Accordingly, as has been observed in the case of Kheinkor War



(supra), the relevant paragraphs (11, 12, 13) being extracted herein below, this Court at this juncture is inclined to allow the prayer made by the petitioners.

“11. This Court has considered the submission made by the learned counsels for the parties as far as the facts of the case are concerned, since prima facie, the investigation has confirmed that the accused/petitioner has indeed committed sexual assault upon the minor survivor, who is a minor of about 14 years old, therefore, the case has proceeded to the stage of framing of relevant charges against him, and that recording of the evidence of the prosecution witnesses is ongoing. However, at this stage, this Court will not go into the merits of the case of the parties, since an observation made in this regard, may affect the rights of the parties at the trial. Be that as it may, what is apparent is that the accused/petitioner has been sent to judicial custody for the alleged offence committed by him.

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.”

11. It is hereby directed that the petitioners be released on bail on the following conditions:

- i) That they shall not abscond or tamper with the evidence or witnesses;
- ii) That they shall attend court as and when called for;
- iii) That they shall not leave the jurisdiction of Meghalaya, except



with due permission of the court concerned;

- iv) That they shall not come into contact with the survivor during the pendency of the trial, except with due permission of the court; and
- v) That they shall bind themselves, individually on a personal bond of ₹ 50,000/- (Rupees fifty thousand) with one surety of like amount to the satisfaction of the Trial Court.

12. Let copy of this order be issued upon the Superintendent of District Prisons and Correctional Home, Shillong for compliance.

13. Accordingly, petitions disposed of. No costs.

Judge

Meghalaya
28.07.2026
"Tiprilynti-PS"