Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

AB. No. 13 of 2020

Date of Decision: 07.09.2020

Shri. Bashemphang Nongtnger Vs. State of Meghalaya.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S.A. Sheikh, Adv.
For the Respondent(s) : Mr. H. Abraham, GA.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

1. This is an application under Section 438 Cr.P.C preferred by the petitioner seeking grant of pre-arrest bail in connection with Mawsynram P.S case No 6(2) 2020 u/s 363 IPC r/w section 7 & 8 POCSO, Act.

2. According to the petitioner, he was friendly with one Ms. Bobita Burman(who is said to be about 19 years of age) who came to meet him at Puksora on 17.02.2020 ostensibly after attending a fest programme of Koch Manchi at Pyndenborsora. She was accompanied by her friend who is a minor.

3. The petitioner states that he went to meet Ms. Bobita as she had already arrived at Puksora and after the meeting, they were looking for a vehicle to take them back to the girl's village, but since it was already late,

no vehicle was available and Ms. Bobita having no relatives at Puksora, the petitioner had no option but to invite her to stay with him at his cousin's residence(Government quarter) which she agreed and on reaching the residence, the petitioner arranged for the girls to sleep in a separate room. The following day, the petitioner went to drop them to their village.

4. However, it came to the knowledge that on 18.02.2020 an FIR was lodged before the Dangar Police Outpost by one Shri Krishna Barman who had informed the police that on 17.02.2020, his sister-in-law along with another girl went to the annual fest at Pyndenborsora, but both girls did not return home that night. The police then registered the said Mawsynram P.S case No 6(2) 2020.

5. In course of investigation, four suspects who have allegedly taken the girls to the said Fest were arrested, but soon after were let off on bail by the Court.

6. In the month of March, 2020, the police then came looking for the petitioner and his cousin Shri Wellstone Nongtnger in connection with the Mawsynram P.S case No 6(2) 2020 which led the petitioner to approach the Court of the learned Special Judge (POSCO), Shillong with an application for grant of pre-arrest bail to which the Court initially granted interim bail, but eventually vide Order dated 03.07.2020, the said application was rejected. It was then that the petitioner approached this Court with this instant application.

7. The learned counsel for the petitioner, Mr. S.A. Sheikh submitting of behalf of the petitioner has contended that the petitioner is not named in the FIR but as was revealed from the statement of the victim is that one boy named Shiba came and dropped them at their home which is what the petitioner has done as he could not leave the two girls. If this was an offence, then the victim could have reported the same to the Complainant which

should reflect in the FIR.

8. It is the contention of the petitioner that he have to help the girls as they have nowhere to go in the night and so he took them to the residence of his cousin because if anything would have happened to them, he would be responsible, which according to him is not an offence.

9. It is also submitted that the petitioner on his own had appeared before the I/O and he is ready to appear again if this Court imposes any conditions to this effect and as such, it is prayed that pre-arrest bail may be granted to the petitioner in this regard.

10. Mr. H. Abraham, learned GA while opposing the submission of the learned counsel for the petitioner has argued that the petitioner on his previous pre-arrest bail application having been rejected by the Court of the learned Special Judge (POCSO) by which he was also directed to surrender to custody, by evading surrender, he has violated the said Order for which he is not entitled to relief in this instant bail application.

11. It is also submitted that the victim has yet to identify the culprits and as such, the custody of the petitioner is required for the purpose of TIP and as such, this application is liable to be rejected.

12. On consideration of the submission of the learned counsels for the parties, what is first required is to look into the case diary to find out what the I/O has to say on the involvement of the petitioner herein as far as the criminal case referred to above is concerned.

13. There is no reference to the complicity of the petitioner to attract the adverse provisions of section 363 IPC as the alleged victim, who claims to be his girlfriend has not made any allegation of kidnapping against him. There are also no ingredients of section 7/8 of the POSCO Act attributable to the petitioner as far as the said Mawsynram P.S case (supra) is concerned.

14. It is also well settled that for conduct of TIP, it is not necessary for the accused to be in custody for the exercise. The submission of the learned GA on this count cannot be accepted by this Court.

15. It is also seen that there is no adverse report against the character of the petitioner.

16. Under the circumstances, the fact that the Police had come looking for him would convince this Court that a case of apprehension of arrest is made out.

17. In view of the above, at this stage of the investigation (subject to further evidence), the petitioner has been able to make out a case for relief under Section 438 Cr.P.C.

18. This application is accordingly allowed and the Police are directed to release the petitioner on bail in the event of his arrest on the following conditions:

i) That he shall not abscond or tamper with the witnesses or evidence;

ii) That he shall subject himself to interrogation by the I/O as and when required;

iii) That he shall not leave the jurisdiction of India without prior information to the I/O or the Court concerned (in the event the matter is taken up by the Court);

iv) That he shall furnished a personal bond of ₹30,000/- (Rupees thirty thousand) only along with two sureties of like amount to the satisfaction of the arresting authority.

19. With the above, this application is hereby disposed of. The interim bail granted is hereby made absolute.

20. No cost.

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HIGH COURT OF MEGHALAYA

21. Registry is directed to return the case dairy.

Judge

Meghalaya
07.09.2020
"D. Nary, PS"