Serial No. 01-02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 18 of 2020 with
BA No. 19 of 2020

Date of Decision: 13.10.2020

Shri. Balajeid Lang Dorphang	Vs.	State of Meghalaya.
Shri. Balajied Lang Dorphang	Vs.	State of Meghalaya.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K. Ch. Gautam, Adv.
For the Respondent(s) : Mr. N.D. Chullai, AAG. With
Mr. A.H. Kharwanlang, GA.

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

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

1. This matter has been taken up today via video conferencing.

2. On 23.12.2016, the Chairperson, State Commission for Protection of Child Rights, Meghalaya submitted a complaint to the Superintendent of Police, East Khasi Hills District, Shillong to the effect that Shri Julius Kitbok Dorphang had illicit sexual intercourse with a minor girl, which is a violation of the child's right to life and dignity.

3. In this regard, a criminal case was registered being Laitumkhrah P.S. Case No 239(12) of 2016 u/s 366(A) IPC R/W Section 3(a)/4/5 of the POCSO Act and Section 5 of the ITP Act.

4. Again, on 05.01.2017, another FIR was filed by the Chairperson, State

Commission for Protection of Child Rights, Meghalaya, alleging that the accused Shri Julius Kitbok Dorphang had committed a similar offence against the same minor victim somewhere within the jurisdiction of Nongpoh, Ri-Bhoi District, leading to the registration of another criminal case being Umiam P.S. Case No 1(01)2017 u/s 376(2) (i)(n) IPC R/W section 4/6/17/ of the POCSO Act and Section 5 (I) of the Immoral Traffic (Prevention) Act, 1956.

5. The accused along with some co-accused were arrested and are now in judicial custody.

6. The petitioner filed two separate bail applications both under Section 439 Cr.P.C before this Court, registered as B.A. Case No 18 of 2020 relatable to the Umiam P.S. Case No. 1(01)2017 and another as B.A. Case No 19 of 2020 related to the Laitumkhrah P.S. Case No. 239(12) of 2016. Both matters being connected, it is deemed convenient and expedient to take up the two together and to pass a common order herein.

7. Heard Mr. K.Ch. Gautam, learned counsel for the petitioner who has submitted that the petitioner was arrested in the abovementioned POCSO cases and is still in custody for three years and ten months. It is also submitted that the accused is in hospital and his health condition has deteriorated to the extent that he requires special treatment, which could be afforded by the family members in any private hospital for which prayer for enlargement on bail is made herein.

8. Again, learned counsel for the petitioner has submitted that this Court in the last order dated 27th August, 2020 while disposing of similar applications for bail on behalf of the accused person herein, had given a direction to the Trial Court to complete the trial within a period of six months. However, it is noticed that the cases have not proceeded as directed. In the Jowai Court, only two witnesses have been examined, which is a clear violation of several orders of this Court whereby, direction was given to expedite the trial.

9. The learned counsel has also submitted that considering the health condition of the accused and his long period of detention, bail may be considered to allow him to properly defend his case since from the records it is seen that the star witness, i.e the prosecutrix has already been examined and as such, there is no question of hampering and tampering with the evidence.

10. Mr. Gautam in support of his case has cited the case of ***Sanjay Chandra v. CBI: (2012) 1 SCC 40*** at paragraphs 21, 22 and 40, ***Dipak Subhashchandra Mehta v. CBI & Anr: (2012) 4 SCC 134*** at paragraph 35, ***Tarun Tejpal v. State of Goa: (2015) 14 SCC 481*** and ***Shri Elbert Shemphang Kharlukhi v. State of Meghalaya: BA No. 9 of 2019*** at paragraph 22.

11. It is prayed that these applications may be allowed and the accused may be enlarged on bail with any conditions deemed fit and proper to be imposed by this Court.

12. Also heard Mr. N.D. Chullai, learned AAG assisted by Mr. A.H. Kharwanlang, learned GA appearing on behalf of the State Respondent.

13. Learned AAG has submitted that this Court has called for the status report of the cases at Nongpoh and Jowai as well as the medical report of the accused herein. Accordingly, on the basis of such report, this Court may be pleased to consider the matter and pass necessary orders.

14. I have carefully considered the submissions made by the learned counsels for both the parties and have also perused the applications and the related materials on record, including the status report filed by the learned Special Judge (POCSO), Nongpoh as well as Special Judge (POCSO), Jowai. I have also seen the medical report filed by the Joint Director of Health Services (S.S) Civil Hospital, Shillong in compliance with this Court's Order dated 08.10.2020.

15. As far as the medical condition of the accused Shri. Julius Kitbok Dorphang is concerned, it is seen that he has been admitted at the Civil

Hospital, Shillong on 05.10.2020 with complaint of discomfort and fullness of abdomen, loss of appetite with mild cough for three days. It is seen that thorough investigation has been carried out including ECG, UGE (endoscopy), Chest X-ray and CT Thorax and the analysis is that the patient is stable with only mild complaint of abdominal discomfort.

16. In this regard, this Court has noticed that the jail authorities as well as the Civil Hospital authorities have not failed in their duties as far as affording immediate treatment to this particular accused is concerned as and when required. However, it is hereby stressed that as and when required, the accused person, infact any UTP or convict requiring medical attention is to be attended to immediately by the authorities concerned.

17. As far as the status report is concerned, it is seen that the case before the learned Special Judge (POCSO), Ri-Bhoi District, Nongpoh, the case is at the stage of examination of the accused under Section 313 Cr.P.C.

18. As far as the case at Jowai is concerned, it is seen that steps have been taken by the Court for recording of evidence. It is urged that the learned Trial Court may consider taking up the matter on a day today basis, if it is found practicable.

19. As pointed out by the learned counsel for the petitioner, this Court vide order dated 27.08.2020 in BA. No. 1 of 2019 with BA. No. 24 of 2018 had directed the Trial Courts to complete the proceedings within the outer limit of six months. That period has not yet expired as on date.

20. On consideration of the related authorities relied upon by the learned counsel for the petitioner, what could be understood is that in the context of these particular applications, the Court would first consider the matter as to whether there is any change of circumstances between the period when the last bail application was preferred before this Court and today, the only ground that the petitioner had would be on the ground of medical exigency, however, taking into account the medical report herein, this Court is of the considered

opinion that at this juncture the accused is not required to be given the privilege of being enlarged on bail for treatment elsewhere.

21. This being the case, the applications under consideration are devoid of merit and the same are accordingly rejected.

22. Let copy of this order be issued upon the Superintendent District Jail, Shillong as well as upon the learned Special Judge (POCSO) at Nongpoh and Jowai respectively for compliance.

23. With the above these applications are hereby disposed of by this common order. No Cost.

Judge

Meghalaya
13.10.2020
"N.Swer, Stenographer"