Serial No. 08
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 20 of 2020

Date of Decision: 05.11.2020

Shri. Robin D. Sangma 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. H. Kharmih, 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 via video conferencing.

2. This is an application under Section 439 Cr.P.C read with Section 167 (2) (a) (i) Cr.P.C for grant of bail to the accused person Shri Keming D. Sangma through the petitioner who is the brother of the accused person.

3. Mr. K. Ch. Gautam, learned counsel for the petitioner submits that the accused person was arrested on 24.07.2020 in connection with Mawsynram P.S Case No. 21(7) of 2020 under Section 5(l)(m)(n)/6 of the POCSO Act to the effect that the accused person raped his eleven-year-old daughter and is languishing in judicial custody for more than 90 days since the date the accused person was arrested and no charge sheet has been filed till date by the investigating agency.

4. Learned counsel for the petitioner also submits that the petitioner has

approached the Court of the learned Special Judge (POCSO), Shillong, however the learned Special Judge(POCSO) is on maternity leave and no power has been conferred to any other Judge for taking up cases falling under the provisions of the POCSO Act, as such the petitioner is before this Court for grant of default bail to the accused person for failure on the part of the investigating agency to file the charge sheet within the mandatory period of 90(ninety) days.

5. It is prayed that since 95 days has elapsed, the charge sheet has not been filed, the accused person is therefore entitled to be released on statutory bail under the provision of Section 167 (2) Cr.P.C and any conditions may be imposed upon the petitioner, if enlarged on bail to which he undertake to comply with.

6. Mr. H. Kharmih, learned GA on behalf of the State respondent has candidly admitted that the charge sheet could not be filed before the said stipulated period of 90 days and the same has been filed only two days' ago. However, the learned GA has chosen to impress this Court the offence involved is very serious to the extent that the accused has committed the heinous crime of rape on his own minor daughter of eleven years old and even if this Court is inclined to enlarge him on bail, being the step father of the victim, he would pose a grave danger to her, and as such, it is prayed that his bail application may not be allowed.

7. On consideration of the submission of the parties and on perusal of the application in question as well as the case diary which has been produced before this Court today, what is evident is that the accused person was arrested on 24.07.2020 on the complaint filed by his own wife to the effect that he had raped his own step daughter who is eleven years old. The accused was thereafter forwarded to 14 days' judicial custody during the initial period which custody was extended from time to time.

8. It is also seen from the record and as submitted by the learned GA that

the draft charge sheet was prepared and submitted to the Superintendent of Police, East Khasi Hills, Shillong for orders on 29.10.2020, the same was approved on 02.11.2020 and was submitted before the Court on 03.11.2020.

9. Without going into the merits of the case, this Court is called upon to examine whether the case of the accused would fall under the provision of Section 167 (2)(a)(i) Cr.P.C and the eventuality of the same.

10. A look at Section 167 (1)(2)(a)(i) Cr.P.C would show that the provision reads as follows:

> ***"167. Procedure when investigation cannot be completed in twenty four hours. - (1)*** *Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.*
>
> *(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that-*
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> *1[(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-*
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> *(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;*
>
> *(ii) ……. and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be*

deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]".

11. In the case of default bail, the Hon'ble Supreme Court in the case of ***Rakesh Kumar Paul v. State of Assam: (2017) 15 SCC 67*** while expounding the provision of Section 167 (2)(a)(i) and (ii) Cr.P.C had held that where an investigation is not completed within 60 days or 90 days as the case may be, no charge sheet is filed by the sixtieth or ninetieth day, accused applies for default bail and is prepared to furnish bail, accused becomes entitled to default bail which cannot be frustrated either by prosecution or court.

12. This being the case, this Court is duty bound to comply with the statutory requirement of law and the accused who have come forward and has indicated his willingness to furnish bail, the same has to be granted.

13. Consequently, this application is accordingly allowed.

14. The accused Shri Keming D. Sangma is hereby enlarged on bail on the following conditions:

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

(ii) That he will cooperate with the I/O as and when called to do so;

(iii) That he shall not be allowed to be seen in the presence of the victim at all times, except when required by law (considering the fact that the victim is a minor and there could be a psychological effect on her if she is within sight and presence of the accused);

(iv) That he shall not leave the jurisdiction of India during the course of the trial.

15. Apart from the above conditions, the accused is also directed to produce a personal surety of ₹ 50,000/- (Rupees fifty thousand) with two solvent sureties of like amount to the satisfaction of the Court concerned.

16. The Court before whom the accused is remanded will issue release notice on being satisfied with the bail bond executed.

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17. Registry to return the case diary accordingly.

18. Bail application disposed of. No cost.

Judge

Meghalaya
05.11.2020
"D. Nary, PS"