Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 25 of 2020

Date of Decision: 02.12.2020

Shri. Bhola Rai Vs. State of Meghalaya.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. P.K. Borah, Adv.
For the Respondent(s) : Mr. N.D. Chullai, AAG. with
Mr. S. Sengupta, Addl. Sr. GA.

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

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

1. The Petitioner has approached this Court in an application under Section 439 Cr.P.C. with a prayer for grant of bail as he was since arrested in connection with Rynjah P.S. Case No. 128(10) 2020 u/s 5(j)(ii)/6 of the POCSO Act.

2. The Petitioner is said to be a married with two young children and is earning his livelihood as a Taxi driver.

3. It is further stated that the Petitioner along with his family members had left for his native place at Bihar on 08.03.2020 and was stranded there due to the Lockdown.

4. However, on 23.10.2020, the police came to his village and arrested him in connection with the said Rynjah P.S. Case No. 128(10) 2020.

5. On making enquiries, the Petitioner came to know that he was accused of committing rape on an alleged minor who is actually about 19 or

20 years of age when the competent authorities, including the hospital authorities found out that she was pregnant and have delivered a male child at NEIGRIHMS, Shillong on 14.10.2020.

6. It is also stated that the alleged victim had took the name of the Petitioner as the father of the new born child and accordingly, as stated above, he was arrested by the police.

7. Mr. P.K. Borah, learned counsel for the Petitioner has argued that the Petitioner has been falsely implicated in the case as the alleged victim had earlier proposed marriage to him, to which he declined being already married with two children and as such, the victim must have had a clandestine affair with someone else and had implicated the Petitioner only out of vengeance.

8. Learned counsel for the Petitioner has also submitted that it is learnt that the child was born prematurely and as such, he may have been conceived sometime in the month of April 2020, by which time, the Petitioner was already at Bihar.

9. Mr. Borah has also reiterated that the Petitioner is willing to undergo DNA test to disprove paternity and prayer is made herein for the Court to direct the same to be conducted.

10. It is finally submitted that the Petitioner is a permanent resident of Shillong and a Taxi driver by profession and as such, if granted bail, he shall not abscond or influence the witnesses and shall furnish sufficient surety in this regard.

11. Prayer is hereby made for this instant application to be allowed and for necessary order for grant of bail to the Petitioner to be passed.

12. Mr. N.D. Chullai, learned AAG assisted by Mr. S. Sengupta, learned Addl. Sr. GA, has opposed the prayer of the Petitioner for grant of bail, mainly on the ground that cases under the POSCO Act are serious in nature,

especially involving one of sexual assault as is the present case.

13. Learned AAG has further submitted that the case dairy as called for by this Court has been produced. The status report has also been filed as far as the progress of investigation is concerned. On going through the same, this Court may peruse the statement of the victim and being a minor, the provisions under the POCSO Act being attracted, Section 29 of the said POCSO Act clearly provides that the accused has to prove his innocence, the fact that he is guilty is a presumption which is a statutory provision and as such, he may not be enlarged on bail at this point of time, it is urged.

14. I have given my considerate attention to the submission of the learned counsels for the rival parties and the facts as stated above, need not be reiterated herein, however it is pertinent to mention herein that the genesis of this case is the Medico-Legal Report filed by the attending Doctor to the effect that the alleged victim had visited the hospital with complaint of abdominal pain, which turns out that she is pregnant for 7(seven) months and on the same day, that is, 14.10.2020 she delivered a baby boy at the said hospital (NEIGRIHMS).

15. On receipt of the said information at the Nongmynsong Police Station, a police officer was deputed to go to the place of occurrence and accordingly, statement u/s 161 Cr.P.C. of the victim said to be 16 years was duly recorded.

16. Thereafter, a formal FIR was lodged by the mother of the alleged victim and a case as mentioned above was registered. Investigation was launched to set the process in motion leading to the arrest of the Petitioner herein.

17. It is well settled that courts while exercising bail jurisdiction, wide discretional powers have been bestowed, primarily keeping in mind the principle of personal liberty as enshrined in our Constitution and the age old adage that “bail is the rule and jail an exception”. However, it is also equally

important for courts to be reminded that the discretion to be exercised has to be judicious with focus on the particular facts and circumstances of the case in hand.

18. In the case of ***Sanjay Chandra v. CBI:(2012) 1 SCC 40*** at paragraph 40 the Hon'ble Supreme Court in a case for consideration of bail has observed as follows:

> "***40.*** *The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required."*

19. In the case in hand, what is observed from the records, particularly the case dairy is that the alleged victim had gone to the hospital on her own with a complaint of abdominal pain, which has set in motion these proceedings. The Investigating Officer has then recorded her statement under Section 161 Cr.P.C. basically, she had stated that she knew the Petitioner/accused who is her neighbour and that she had sexual intercourse with him since he promised to marry her. In her statement under Section 164 Cr.P.C. (under oath), she had reiterated that she voluntarily had sexual intercourse with the Petitioner since he promised to marry her and that she is in love with him and they had a relationship together. It can be presumed, prima facie that the physical relationship between the two is consensual.

20. Another aspect of the matter is that the alleged victim has given her age as 16 years in her statement before the I/O, however medical test, including physical, dental and radiological carried out at NEIGRIHMS revealed that her age is above 18 years and below 19 years as on 17.11.2020.

21. It is also seen from the status report that the case is pending for DNA testing for paternity testing, which is also the prayer of the Petitioner who has indicated his willingness to undergo such test, which does not reflect an attitude of guilt on the part of the Petitioner.

22. In the light of the above, I am of the considered opinion that, notwithstanding the seriousness of the alleged offence, prima facie, it appears that no case is made out for offences under the POCSO Act and the said sexual intercourse (as alleged by the victim and denied by the Petitioner) was consensual and for all practical purposes made between two consenting adults, discretion of this Court is thus applied under the circumstances.

23. Consequently, I am inclined to allow the application of the Petitioner for grant of bail, which is hereby done so with the following conditions:

(i) That the Petitioner/accused shall not abscond or tamper with the evidence and witnesses;

(ii) That he shall not leave the jurisdiction of India without the permission of the I/O;

(iii) That he shall make himself available to the I/O as and when necessary;

(iv) That he shall furnish a personal bond of ₹ 50,000/- (Rupees fifty thousand) only together with two solvent sureties of like amount to the satisfaction of the Court of the Special Judge (POCSO), Shillong.

24. The learned Special Judge (POCSO) Shillong is also hereby directed to ensure that the release notice is issued on the presentation of the bonds etc. by the Petitioner.

25. The I/O is also directed to take necessary steps for the said DNA test of all concerned at the earliest.

26. Before parting with this case, it would not be out of place to indicate

herein that the above findings and observations are only for the purpose of this bail application and as stated above, the matter is at the prima facie stage and as such, the I/O or the Court concerned are not necessarily restricted in their functions as far as investigation or trial of the case is concerned.

27. With the above, this instant application is hereby disposed of as allowed. No cost.

28. Registry is directed to return the C.D to Mr. S. Sengupta, learned Addl. Sr. GA along with copy of this order to the Trial Court concerned.

Judge

Meghalaya
02.12.2020
"D. Nary, PS"