Serial No. 04
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 28 of 2020

Date of Decision: 11.12.2020

Shri Kobad Ali Vs. State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K.P. Bhattacharjee, Adv.
For the Respondent(s) : Mr. N.D. Chullai, AAG. with
Ms. R. Colney, GA.

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

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

1. On 23.06.2020 an FIR was lodged by the General Secretary, South Western Zone, AHAM before the Officer in Charge Tura Women Police Station with a complaint against Shri Poresh Ali alleging that, he had sexually assaulted a minor girl.

2. On receipt of the said complaint, a case being Tura Women Police Case No. 29(6)2020 under Section 366 A/323 IPC r/w Section 5 (i)(j)/6 POCSO Act was duly registered and the said accused was accordingly arrested and is now in judicial custody.

3. The Petitioner who is the brother of the said accused person has approached this Court with an application under Section 439 Cr.P.C with a prayer for grant of bail.

4. This Court while hearing this matter at the first instance had directed that the Case Diary and relevant records of the case be produced before the

Court before hearing the parties finally.

5. Heard Mr. K.P. Bhattacharjee, learned counsel for the Petitioner who has submitted that the accused above named has been falsely implicated in the said criminal case without any basis, inasmuch as, the FIR was lodged by parties not related to the alleged victim and without the knowledge and consent of the alleged victim or her parents.

6. The allegations that the accused had sexually assaulted a minor girl is also not correct since the accused and the alleged victim are husband and wife having been married as per Shariyat and Mohmmedan Law. In fact, the alleged victim at the time of the marriage was already an adult and as such, the offences under the POCSO Act are not attracted in this case.

7. The learned counsel has also submitted that the alleged victim has proved that she is an adult by stating that her age is about 20 years and that she is willingly staying with the accused as husband and wife which has also been approved by the parents of the girl.

8. It is also the submission of the learned counsel that the said FIR was lodged with an ulterior motive and vested interest as the accused person is a businessman and the informant party had threatened and demanded money from him for which, on his refusal the said FIR was lodged.

9. It is prayed that this application may be allowed and the accused person may be enlarged on bail on any condition as deem fit and proper to be imposed by this Court.

10. Also heard Mr. N.D. Chullai, learned AAG assisted by Ms. R. Colney, learned GA who has submitted that the records including the Case Diary have been produced before this Court today and on perusal of the said record, the State would have no objection to the grant of bail as far as the accused person is concerned, taking into consideration the materials on record as well as the statement of the alleged victim.

11. Learned AAG has further submitted that if this Court considers bail to be granted to the accused person, he may be released with strict conditions to

be imposed.

12. Upon hearing the learned counsels and on perusal of the records including the Case Diary, what is noticed is that initially the case against the accused was registered under Section 366A/323 r/w Section 5 (i)(j)/6 POCSO Act. However, after the statement of the alleged victim recorded under Section 164 Cr.P.C, the Investigating Officer has filed the Charge Sheet coming to a prima facie finding that a well-founded case has been established against the accused person under Section 366/323/376 IPC.

13. The above would indicate that no case has been made out against the accused under the relevant sections of the POCSO Act. Even the statement of the alleged victim recorded under Section 164 Cr.P.C would show that she has clearly stated that she is legally married to the said accused person as per the rights and rituals of the Muslim Community and that she is staying together with the accused person at Pipulbari. She has also further stated that her age is 20 years and not 17 years.

14. From the records it is also seen that the I/O had seized the relevant documents relating to the age of the alleged victim being the duplicate copy of the Birth Certificate and the Baptism Certificate, which on perusal would show that the date of birth of the alleged victim was 17.11.2000.

15. In light of the above, firstly, since the alleged victim is already an adult and secondly, since she has stated that she is married to the accused therefore, the allegation of sexual assault, prima facie may not be correct.

16. Under the circumstances, this Court is inclined to allow this application and the prayer of the Petitioner for grant of bail to the accused person Shri Poresh Ali is hereby allowed.

17. Accordingly, the accused person Shri. Poresh Ali is hereby enlarged on bail on the following conditions that:

i) He shall furnish a personal bond of ₹ 50,000/- (Rupees fifty thousand) only with two sureties of like amount to the satisfaction of the Court of the learned Special Judge (POCSO),

Tura;

ii) He shall appear before the Court as and when required;

iii) He shall not abscond or tamper with the evidence and witnesses;

iv) He shall not leave the jurisdiction of India without prior permission of the Court.

18. Registry to furnish copy of this order to the learned Special Judge, (POCSO), West Garo Hills, Tura, who shall cause release notice to be issued on being satisfied with the bonds and relevant documents produced.

19. The Case Diary and Records are hereby directed to be returned to the Trial Court.

20. Case disposed of accordingly.

Judge

Meghalaya
11.12.2020
"N.Swer, Stenographer"