Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 33 of 2020

Date of Decision: 15.12.2020

Shri Siddique Miah Vs. State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. A. Sheikh, Adv.
For the Respondent(s) : Mr. S. Sengupta, Addl. PP for R. 1.
None for R 2.

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

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

1. This matter was taken up via Video Conferencing.

2. From the records particularly the brief facts of the case as seen from the charge sheet No. 3 dated 07.10.2020, it is noticed that on 09.08.2020, the police received a written FIR from the complainant who is the Chairperson CWC, Ampati in the South West Garo Hills District.

3. The complaint is that the complainant on interaction with one minor girl aged about 16 years, it is found that she is said to have been married to the accused person herein Shri Momin Miah and the child being below 8 years, it is prayed that necessary action may be taken in this regard.

4. The police on receipt of the said FIR has accordingly, registered a case being Women Police Case No. 3(8)2020 under Section 376 IPC r/w Section 3(a)/4 of the POCSO Act, 2012. The said accused person was also accordingly

arrested on 10.09.2020 in connection with the said case on his surrender before the police and is still in judicial custody.

5. The Petitioner who is the brother of the accused person had then approached this Court with this instant application under Section 439 Cr. PC with a prayer for grant of bail to the said accused person Shri. Momin Miah.

6. Heard learned counsel for the Petitioner, Mr. S.A. Sheikh who has submitted that the accused person is innocent and has not committed any offence as alleged. It is also submitted that the alleged marriage between the accused and the alleged victim on 03.08.2020 is not an actual marriage as no marriage deed or documents like Nikah Nama was seized from the accused person or from the victim's family. Infact, the ceremony that took place on 03.08.2020 was actually an engagement ceremony for which the relatives of both sides have agreed that the marriage will take place only when the alleged victim attained the age of 18 as she is about 16 years at present.

7. The learned counsel has also submitted that there has been no sexual intercourse between the accused person and the alleged victim as could be seen from the statement of the alleged victim under Section 164 Cr. PC where she has denied having had any sexual intercourse with the accused person. Even the medical report is also not indicative in this regard, submits the learned counsel.

8. The fact that the accused person is in custody for more than three months and being the provider of the family of his parents, it is prayed that the accused person may be enlarged on bail for which he is willing to undertake to abide by any conditions deemed fit and proper to be imposed by this Court.

9. To support his contention, the learned counsel has cited the following decisions: -

i) Shri Karan Vs. State of Himachal Pradesh; Order dated 12.11.2020 in Cr. MP(M) No. 2013 of 2020, paragraph 7 to 13.

ii) ***Varunbhai Dilipbhai Kharad Vs. State of Gujarat; Order dated 27.08.2020 in R/Criminal Misc. Application No. 10523 of 2020, paragraph 9 to 12.***

iii) ***Sunil Mahadev Patil Vs. State of Maharashtra; (2015) 3 AIR Bom R(Cri) 594.***

iv) ***Diwakar Yadav Vs. State of Chhattisgarh; Order dated 02.11.2020 in MCRC No. 5986 of 2020 and***

v) ***Akhinur Islam & Anr. Vs. State of Assam; Order dated 17.06.2019 in Bail Appln. 1426/2019***

10. Also heard Mr. S. Sengupta, learned Addl. PP who has submitted that the State would rely on the materials on record which is duly produced before this Court today and has made a prayer that necessary orders may be passed on perusal of the said records.

11. Upon hearing the parties and as noted above, the facts of the case may not be reiterated. Suffice it to say that the accused person was arrested under serious offences especially offences involving women and children. The charge sheet filed by the Investigating Officer indicating that in course of investigation including collection of evidence, a prima facie case under Section 376 IPC r/w Section 3(a)/4 of POCSO Act has been found well established against the accused person Momin Miah.

12. From the records, it also appears that the alleged victim is about 16 years or so at the time of the occurrence. The medical report has also not indicated that there was any recent sign of sexual activities as far as the alleged victim is concerned. What is more telling is that the alleged victim herself in her statement under Section 164 Cr. PC has denied having any sexual intercourse with the accused person.

13. It is well settled that the evidence of a sole witness is reliable, if the same is made by a witness who is otherwise competent and trustworthy as far as the Court is concerned. More so, the evidence of a prosecutrix is also acceptable particularly in cases of sexual assault. However, if the alleged victim or the prosecutrix for that matter has initially denied or stated to the

contrary as far as sexual assault, rape or even an act of consensual sexual intercourse (if the girl is below 18 years), then, subject to further evidence, prima facie, it stands to reason that no case of sexual assault can be made out against the accused person herein.

14. The decisions cited by the learned counsel for the Petitioner are mostly related to the fact that the alleged victim being a minor and having had a relationship with the accused person therein, casually or even to the extent of a marriage relationship, under the peculiar facts and circumstances of each case, the courts have granted bail to the accused person. In principle, though relevant, yet the ratio of the same may not be applicable in this instant case, as observed above, the prominent factor here is that there has been no sexual intercourse between the alleged victim and the accused person.

15. As far as the principle of bail is concerned, this Court is aware of a catena of judgments particularly those passed by the Hon'ble Supreme Court which has re-stated the principle that "Bail and not Jail" should be the guiding principle for all courts to follow, under the given circumstances. Some other relevant factors to be considered is whether the accused person will tamper with the evidence or witnesses, or whether he may abscond and refuse to face trial. If these questions are answered in the negative, then, the courts can grant bail subject to certain conditions.

16. In view of the observations made above, this Court is accordingly inclined to allow the accused person Momin Miah to be enlarged on bail, on the following conditions:

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

ii) That he shall appear before the Trial Court as and when required;

iii) That he shall not leave the jurisdiction of India without the prior permission of the Trial Court;

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

17. The learned Trial Court, on being duly satisfied with the bond executed by the accused person, shall issue Release Notice calling upon the jail authority to release the said accused person.

18. With the above, this application is hereby disposed of. No cost.

19. Registry is directed to send copy of this order to the Trial Court concerned and the records produced to be sent back as well.

Judge

Meghalaya
15.12.2020
"N. Swer, Stenographer"