

GAHC020004262025

2025:GAU-NL:410



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
KOHIMA BENCH

Case No. : Bail Appln./9/2025

SMTI. WATITULA
WIFE OF SHRI ALIMEREN, R/O LOWER FOREST COLONY, KOHIMA-
797001, NAGALAND

VERSUS

STATE OF NAGALAND AND ANR
KOHIMA NAGALAND

2:SMTI
HAYIPENI
D/O LT. MYINTHUNG
R/O D.KHEL KOHIMA
PERMANENT R/O MONGPIEY

Advocate for the Petitioner : SENTIYANGER,
KEVISERIENUO, WAPANGLEMLA, NOCKLEI M KONYAK, KONLI BUCHEM, V ANNE
THERIE

Advocate for the Respondent : P.P, NAGALAND,

BEFORE
HON'BLE MR. JUSTICE PRANJAL DAS

ORDER

Date : 01-09-2025

The applicant, Smti. Watitula, has filed the instant bail

application under section 483 of the BNSS, 2023 seeking bail for the accused, Shri. Alimeren, who is stated to have been arrested on 29.05.2025, in connection with Kohima Women PS case no. 6/2025 under section 64 (2)(i) BNS read with Section 4 of the POCSO Act, 2012.

2. Heard Mr. Sentianger, learned counsel appearing for the petitioner. I have also heard Ms. S. Mere, learned Public Prosecutor for the State. The informant/ alleged victim was impleaded as the respondent no. 2 and as she did not appear despite of notice being issued to him, Ms. Mika H Aye, was appointed as the Amicus Curiae.

3. The case arose out of an FIR dated 29.05.2025, lodged by the alleged victim with the allegation that in the year 2022, she was sexually assaulted by the accused who was a Driver at the Forest Department and a resident of the Forest colony; at that time, she was a minor aged 17 years and ignorant about her rights and the gravity of the offences; she accordingly prays for punishing the culprit. However, the present case was registered only on 29.05.2025, and in this regard, the I.O of the case submitted his explanation before the learned Court wherein it is stated that earlier, another case was registered against the accused and the circumstances of the present case were found to be closely related, hence a comprehensive inquiry was required and in this context, there was some delay in registering the present case. It appears that the fate of the earlier case is not known at present, but the learned counsel for the petitioner submits that as per information

received by him, it has not yet been charge sheeted.

4. Scanned copy of the CD was called for and received, and the same has been perused.

5. The learned counsel for the petitioner submits that the accused has been falsely implicated, and that the cause of delay of 3 (three) years in filing the present FIR has not been explained. It is further submitted that the accused is already in custody since 29.05.2025.

6. In support of his contentions, the learned counsel for the petitioner has referred to the following decisions:-

- (i) *Raju Vs. State of Madhya Pradesh, (2008) 15 SCC 133, (Para 11) ;*
- (ii) *Radhu Vs. State of Madhya Pradesh, (2007) 12 SCC 57, (Para 6) ;*
- (iii) *Criminal Misc Case No. 1524/2021 order dated 16.08.2021 of the Hon'ble Delhi High Court, (Para 18) ;*
- (iv) *Sadashiv Ramrao Hadbe Vs. State of Maharastra, (2006) 10 SCC 92, (Para 8) ;*
- (v) *Dharmender Singh Vs. State (Govt. of NCT of Delhi, (2020) SCC Online Delhi 1267, (Para 68) ;*
- (vi) *Manirul Islam Vs. State of Assam and Anr; 2021 (3) GLT*

128, (Para 49) ;

(vii) *Anwar Hussain Sheikh Vs. State of Meghalaya and Anr*,
2022 (4) GLT (ML) 1103, (Para 14).

7. Relying on these decisions, the learned counsel for the petitioner submits that one of the common threads that runs through the above referred decisions of the Hon'ble Apex Court is that a concern has been expressed with regard to some false rape cases filed; also noticing that the same causes distress to the accused as well, and that, the accused also needs to be protected from such false accusations. With regard to the decisions rendered by this Court and the Hon'ble High Court of Delhi and Meghalaya, it is contended that the reverse burden in a POCSO case shifts to the accused only after charges have been framed and the trial has formally commenced.

8. Summing up his submissions, the learned counsel for the petitioner contends that the accused is deserving of bail at this stage, and he is willing to abide by any conditions.

9. On the other hand, Ms. S. Mere, learned Public Prosecutor appearing for the State respondent submits the updated Case Diary before the Court, and objects to the grant of bail to the accused contending that the investigation has revealed sufficient incriminating materials against the accused. The learned PP submits that the nature of the offence is grave and the victim was a minor at the time of the alleged offence. The learned PP fairly submits that the investigation is complete in the meantime, resulting in filing of a

charge sheet against the accused, on 30.08.2025.

10. The learned Amicus Curiae, Ms. Mika H Aye, submits that she would adopt the submissions of the learned PP, and the learned Amicus Curiae also objects to the grant of bail to the accused.

11. As stated above, admittedly, the investigation has been completed, resulting in filing of a chargesheet on 30.08.2025. In the application dated 29.05.2025, filed before the learned Principal, District & Sessions Judge, Kohima, the IO had tried to explain the delay in registration of the instant case. The FIR mentions that the time of offence was in the year 2022, though no date has been mentioned. From the face of the FIR, I find no explanation for delay of 3 years in filing the same. In their statements recorded during the investigation, both the victim and her guardian supported the allegations. The victim in her statement stated on similar lines as stated in the FIR. The statement of the accused is also available in the case diary and I have perused the same.

12. It is well settled that in sexual offences, some delay in lodging the FIR could be understandable and acceptable; however, if the quantum of delay is on the higher side, it might necessitate an adequate explanation during the trial. It has been held that more than the delay in lodging an FIR, it is the explanation of the delay which is more important. To what extent, the delay is considered to be affecting the prosecution case, is a subject matter of evidence and trial.

13. In the instant case, prima facie there is a long delay of 3 years in lodging the FIR. However, in terms of the settled principles, its effect on the prosecution case can only be decided during the trial, if one commences upon framing of the charge against the accused. Nevertheless, the contention of the petitioner's side regarding false implication would also be a matter of evidence during the trial. However, the aspect of delay can be one of the factors to be taken into account at this stage for adjudicating the bail petition. As the charge sheet was filed on 30.08.2025, it appears that almost 90 (ninety) days had lapsed by the time of completion of the investigation.

14. In the entire facts and circumstances as discussed and noted above, I come to the considered opinion that subject to suitable conditions, the accused can be granted bail at this stage.

15. Accordingly, allowing this bail application, the accused, Shri. Alimeren, is allowed to go on bail on furnishing a bail bond of Rs. 30,000/- (Rupees thirty thousand) with two sureties of the like amount (one of the surety should be a government servant) to the satisfaction of the learned Special Judge, POCSO, Kohima.

Further, the following conditions are imposed:

- (i) The accused shall not abscond.
- (ii) The accused shall not in any manner intimidate or harass the informant/victim and her near and dear ones.

(iii) The accused shall not in any manner try to intimidate or influence the witnesses.

(iv) The accused shall not misuse his liberty to commit any offences.

16. In case of violation of any of the aforesaid bail conditions, the learned Public Prosecutor and/or the learned Amicus Curiae representing the informant/victim, shall be at liberty to move the Special Court or this Court for cancellation of the bail.

17. The bail application stands allowed and disposed of on the aforesaid terms.

JUDGE

Comparing Assistant