

**BEFORE
HON'BLE MR. JUSTICE S.R. SEN
BA (SH) No. 63 of 2013**

29.05.13

Heard Mr. TT Deingdoh, the learned counsel for the petitioner who submits that a bail application moved before this Court on 26.04.13 in BA (SH) No. 39 of 2013 was rejected. On scrutiny of the Lower Court case record it was found that on 23.04.13, a bail was granted to the accused without the knowledge of the learned counsel, as such, he could not apprise the situation before the Court while moving bail application on 26.04.13.

Considering the submissions advanced by the learned counsel, Lower Court case record was called for, accordingly, Lower Court case record has been placed before this Court.

On perusal of the order dated 23.04.13, it appears that bail was granted by the Judicial Magistrate, District Court Shillong on the ground that the accused person is in detention w.e.f. 11.02.13. Since the learned Magistrate found that the maximum period as specified under Section 167 proviso (a) (ii) CrPC has been completed, Suo-Motto granted bail.

On perusal of Protection of Children from Sexual Offences, Act, 2012, it is clearly specified that, Section-28 made provision to notify and to trial the case under the said Act by a Court of Session as Special Court. Therefore, I could not understand how this case has been endorsed to the Judicial Magistrate which is contrary to the Section-28 of Chapter-VII of the said Act. Hence, the matter is remanded back to the Special Court to consider the bail application as and when filed by the petitioner ignoring the

order passed by this Court vide order dated 26.04.13 as the accused is already in custody more than 90 days as submitted by the learned counsel for the petitioner.

Mrs. NG Shylla, the learned Addl. PP is present.

Registry is directed to roll back the Lower Court case record along with a copy of this order to the concerned court immediately.

With these observations and directions, the matter stands disposed of.

JUDGE

V.Lyndem.