

HIGH COURT OF MEGHALAYA
AT SHILLONG

B.A. No. 21 of 2018

Date of Order: 07.01.2019

Sumanta Deka

Vs.

State of Meghalaya

Coram:

Hon'ble Mr. Justice H. S.Thangkhiew, Judge

Appearance:

For the Petitioner(s) : Mr. H.K. Das, Adv.

For the Respondent(s) : Mr. N.D. Chullai, Addl. AG with
Mr. R. Gurung, Addl. PP.

1. Heard learned counsel Mr. H.K. Das for the petitioner and Mr. N.D. Chullai, Addl. AG assisted by Mr. R. Gurung, learned Addl. P.P. for the State respondent.
2. This court by order dated 21.12.2018 had directed for objections to be filed within 1(one) week, but the same has not been filed. However on the prayer of the learned counsel for the parties the matter is taken up for disposal.
3. The instant application for bail is in connection with Umiam P.S. Case No. 66 (08) 2018 U/S 8 POCSO Act, 2012. The accused is one Shri Arun Chandra Deka and the petitioner Shri Sumanta Deka, son of the accused.
4. The facts of the case is that an FIR was lodged on 14.08.2018 wherein the accused has been said to have committed acts which are punishable under the POCSO (Act) of 2012 and on his arrest on 14.08.2018 has since been in custody.
5. Successive bail applications were filed before the court of the Special Judge POCSO, Nongpoh and two were numbered as Bail application No. 23 of 2018 which was rejected by the order dated

19.11.2018 and Bail application No. 28 of 2018 which was rejected by the order dated 05.12.2018 with reasons recorded therein.

6. The learned counsel for the petitioner submits that the accused has since been charge sheeted on 28.09.2018 and as such the investigation is already completed and further detention of the accused person at the stage is no longer necessary. He also submits that the accused has been in custody for over 4(four) months and as such it is a fit case wherein bail should be granted.
7. The learned Addl. AAG Mr, N.D. Chullai on the other hand submits that the accused does not deserve to be allowed to go on bail for the reason that firstly, no new facts or materials have been brought before the court which would warrant consideration of grant of bail. Secondly, the learned AAG has drawn the attention of the court to the contents of the order dated 19.11.2018 on the bail application which was filed on behalf of the accused by another person namely Baneswar Deka. The Special Judge, Nongpoh has recorded the facts and subsequent events in the case which are disconcerting to note in the least. The order reflects that the said bail application was moved on the new set of facts that a compromise had been entered into by the minor victim girl and the accused person Arun Chandra Deka vide a compromise petition dated 01.10.2018. Further, the Special Judge observed that the minor victim girl and her mother (complainant) were personally present and on being questioned stated that they were present on being coerced and that were under intense pressure influence and duress, for Baneswar Deka.
8. The learned Special Judge took cognizance of the conduct of the said Baneswar Deka for trying to cast undue influence on the minor victim girl and for unnecessarily harassing them to appear before the court, and ordered that proceedings be initiated against the said Baneswar Deka and others, as per law by the court of the Chief Judicial Magistrate, Nongpoh. The facts as stated above

are relevant considerations for grant of bail even though the charge sheet has already been submitted.

9. Normally, after charge sheet is filed, custody of the accused would not be needed for investigation purposes, and also since evidence would have already been collected by the police, chances of destruction or concealment of evidence by the accused would be lessened. However, chances of threatening of witnesses may still exist.
10. In the instant case what has appeared is that there is a reasonable apprehension of the witness being tampered with as there were threats to the complainant and the minor victim girl as recorded in the order dated 19.11.2018.
11. The nature and gravity of circumstances of the offence which involves a minor victim girl under the POCSO Act and the conduct of the accused with reference to the victim and witnesses weigh against the grant of bail at this stage and as such the same is rejected.
12. The court of Special Judge POCSO, Ri-Bhoi District Nongpoh is directed to complete the trial as expeditiously as possible.
13. Petition accordingly disposed of.

JUDGE

Meghalaya
07.01.2019
"Dari Thabah PS"