

**Serial No. 02**  
**Regular List**

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

BA. No. 1 of 2019  
With BA. No. 24 of 2018

Date of Order: 27.08.2020

Shri Julius Kitbok Dorphang Vs. State of Meghalaya & Ors.

**Coram:**

**Hon'ble Mr. Justice W. Diengdoh, Judge**

**Appearance:**

For the Petitioner : Mr. K. Paul, Adv.  
For the Respondent(s) : Mr. N.D.Chullai, AAG with  
Mr. A.H. Kharwanlang, GA.

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

ii)	Whether approved for publication in press:	Yes/No
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1. On 23.12.2016, the Chairperson, State Commission for Protection of Child Rights, Meghalaya submitted a complaint to the Superintendent of Police, East Khasi Hills District, Shillong to the effect that Shri Julius Dorphang, the petitioner herein, had illicit sexual intercourse with a minor girl which is a violation of the child's right to life and dignity.

2. Accordingly, the complaint was received as an FIR and Laitumkhrah P.S. Case No 239 (12) of 2016 under Section 366 (A) IPC read with Section 3(a)/4/5 of the POCSO Act and Section 5 of the ITP Act was registered in this regard.

3. Again, on 05.01.2017, another FIR was filed by the Chairperson, State Commission for Protection of Child Rights, Meghalaya, alleging that the petitioner herein had committed a similar offence against the same minor victim somewhere within the jurisdiction of Nongpoh, Ri-Bhoi District,

leading to the registration of another criminal case being Uiam P.S. case No 1(01) 2017 under Section 376 (2) (i) (n) IPC read with Section 4/6/17 POCSO Act, and Section 5 (I) Immoral Traffic (Prevention) Act, 1956.

4. The petitioner along with some co-accused were arrested and are now in judicial custody.

5. It may be mentioned that the two criminal cases involved the same victim and the petitioner herein as the main accused. By relevant order of the High Court of Meghalaya, the case registered under Laitumkhrah P.S. under the jurisdiction of the Shillong Court was transferred and is now taken up at Jowai, West Jaintia Hills District, while the other case is taken up at Nongpoh, Ri-Bhoi District. Both cases are tried by the respective Special Judge (POCSO).

6. The petitioner filed two separate bail applications both under Section 439 Cr.P.C before this Court, registered as B.A. Case No 24 of 2018 relatable to the Laitumkhrah P.S. Case No 239 (12) of 2016 and another as B.A. Case No 1 of 2019 related to the Uiam P.S. Case No. 1(01)2017. Both matters being connected, it is deemed convenient and expedient to take up the two together and to pass a common order herein.

7. Heard Mr. K. Paul, learned counsel for the petitioner who has submitted that the petitioner was arrested in the abovementioned POCSO cases and is still in custody for about three and a half years. The status report called by this Court from the Trial Courts revealed that in the case at Nongpoh, the evidence of the prosecution is complete, while in the case at Jowai, no witnesses have been examined so far and considering the prevailing situation, there is no likelihood of the trial proceedings in the near future and the petitioner will continue to linger in jail.

8. Learned counsel for the petitioner has also submitted that the petitioner having been in custody for more than three and a half years, there

is no allegation against him that he will evade the process of law. There is also no question that he will hamper the investigation as the charge sheet has already been filed and as submitted earlier, the recording of evidence in the case at Nongpoh has already been completed. In this regard, the case of ***Sanjay Chandra v. CBI: (2012) 1 SCC 40*** at paragraphs 21, 23, 25, 36, 42 & 43 was cited by the learned counsel for the petitioner to support his contention.

9. The second ground raised by the learned counsel for the petitioner is that the co-accused has been released on bail by this Court and as such, on the principle of parity, the petitioner too may be enlarged on bail. The case of ***Dipak Subhashchandra Mehta v. Central Bureau of Investigation & Anr: (2012) 4 SCC 134*** at paragraph 32 and the case of ***Nikesh Tarachand Shah v. Union of India & Anr: (2018) 11 SCC 1*** at paragraphs, 19, 24 & 35 was cited by the petitioner in this regard.

10. It is finally prayed that this Court be pleased to enlarge the petitioner on bail with any conditions which will be abided by the petitioner.

11. N.D. Chullai, learned AAG assisted by Mr. A.H. Kharwanlang learned G.A for the State respondent while opposing the submission of the learned counsel for the petitioner has submitted that the State respondent has already filed separate objections to both the bail applications and the same is hereby relied upon, particularly the averments at paragraphs 3 and 5, which are identical in both the objection petitions. Further, submitting that from the materials on record, including the statement of the victim, it is seen that there is a prima facie case against the petitioner and that the seriousness and gravity of the case is such that bail may not be granted to the petitioner.

12. Another limb of argument advanced by the learned AAG is that this is a case under the POCSO Act and Section 29 of the said Act will come into play as far as presumption is concerned. The case of ***State of Bihar v.***

***Rajballav Prasad: (2017) 2 SCC 178*** at paragraphs 22 and 29 was referred herein to support the case of the State respondent in this regard.

13. As to the argument of the learned counsel for the petitioner that under the prevailing situation the petitioner's prayer may be considered favourably, Mr. Chullai has submitted that the facts and circumstances of the case against the petitioner does not warrant any such consideration.

14. In reply, Mr. Paul has submitted that despite the arguments raised by the learned AAG as regard the seriousness of the case against the petitioner including the provision of Section 29 of the POCSO Act on presumption, the fact remains that in criminal jurisprudence as recognized in our Country, a person cannot be pronounced guilty until the final process of the trial is completed.

15. Upon hearing the argument advanced by the learned counsels for the rival parties, what can be seen here is that the fact of the petitioner being the main accused in the said case before the learned Special Judge (POCSO) at Jowai and also in the case before the learned Special Judge (POCSO) at Nongpoh is in custody till date from the time he was arrested in the year 2017, i.e. on 13.01.2017 is irrefutable. As to the offence alleged, the relevant Sections under the Indian Penal Code as well as Sections 3, 4, 5, 6 & 17 of the POCSO Act and Section 5 of the Immoral Trafficking (Prevention) Act, 1956 have been charged against the accused/petitioner for which trial is proceeding.

16. What is understood here is that, the petitioner having been in custody for more than three and a half years and that nothing adverse has been found against his character and conduct while in custody, he has therefore claimed entitlement to be enlarged on bail.

17. Another factor relied upon by the petitioner is that one of the co-

accused has already been enlarged on bail by this Court vide order dated 06.12.2019 in B.A No. 9 of 2019, therefore, on the principle of parity the petitioner is entitled to be released on bail with any conditions to be imposed by this Court.

18. It is well settled that consideration of a bail application must stand on its own footing inasmuch as, the facts and circumstances of the same has to be taken into account by the Court before rejecting or allowing the application. However, general principles enunciated by the Courts, particularly the Apex Court as far as bail jurisprudence is concerned, can be considered by the Court as a yardstick towards the culmination of the adjudication.

19. In the case of ***Sanjay Chandra (Supra)***, the relevant paragraphs cited by the learned counsel for the petitioner would show that the Hon'ble Supreme Court while elaborating on the principles of bail, has observed that the main object of bail is to secure the appearance of the accused person and that should neither be punitive or preventative since deprivation of liberty must be considered a punishment. The Hon'ble Supreme Court has gone on to say that the discretionary jurisdiction on criminal Courts to grant bail to the accused pending trial has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of society in general. Another area touched is the aspect of delay in the trial which would violate the fundamental right of the accused who is entitled to speedy trial, the absence of which would prolonged his detention in jail custody.

20. In the case of ***Dipak Subhashchandra Mehta (Supra)***, at paragraph 32 the Apex Court has held as follows:

*“32. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be*

*undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly, where the accused is charged of having committed a serious offence, The court granting bail has to consider, among other circumstances, the factors such as (a) the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; (b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and (c) prima facie satisfaction of the court in support of the charge. In addition to the same, the court while considering a petition for grant of bail in a non-bailable offence, apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted.”*

21. In the case of ***Nikesh Tarachand Shah (supra)***, the Apex Court while dealing with a case where the provision of Section 45 of the Prevention of Money Laundering Act, 2002 is under scrutiny vis-a vis the issue of grant of bail, at paragraph 19 of the same has passed observations on the purpose of grant of bail as was set out in the case of ***Gurbaksh Singh Sibbia v. State of Punjab: (1980) 2 SCC 565*** as well as in the case of ***Gudikanti Narasimhulu & Ors. v. Public Prosecutor, High Court of Andhra Pradesh: (1978) 1 SCC 240*** and ***Gurcharan Singh v. State (UT of Delhi): (1978) 1 SCC 118***, where the common refrain is the discussion of application of discretion judiciously while dealing with the issue of bail, taking into account the fact that the attendance of the accused at the trial has to be determined, for which bail is not to be withheld as a punishment since the issue of bail is one of liberty, justice, public safety and burden of the public treasury. However facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail.

22. The State respondent has stressed on the contention that the petitioner was charged with very serious offences involving a minor victim who is a rustic village girl and the petitioner being a man of influence having been a member of the Legislative Assembly of Meghalaya, if released on bail, he will most likely influence and intimidate the witnesses.

23. It was also submitted that considering the nature and gravity of the offence, being one under the POCSO Act, the mere fact that the petitioner has been in jail custody for a long time cannot be the yardstick for grant of bail to the petitioner. The case of *State of Bihar v. Rajballav Prasad (supra)* cited by the learned AAG is a case of cancellation of bail granted by the High Court to the respondent therein.

24. In this case the respondent Rajballav Prasad, who was an MLA at that relevant point of time, was an accused in a case, amongst others under Section 4, 6 & 8 of the POCSO Act as well as Section 4-6 of the Immoral Traffic (Prevention) Act, 1956, where the prosecutrix was a minor girl. Pending trial, he had filed a bail application before the trial Court which was dismissed. He then preferred a bail application before the High Court which was dismissed on withdrawal. Within three weeks thereafter, he filed another bail application before the High Court which was allowed by the High Court by observing that presumption of innocence would continue to run in favour of the accused/respondent until the guilt is brought home. The matter came up before the Hon'ble Supreme Court by way of a Special Leave Petition (SLP) preferred by the State of Bihar and the Hon'ble Supreme Court after hearing the matter has allowed the appeal and cancelled the bail granted to the respondent therein. The similarity to the case in hand cannot be ignored though the facts and circumstances may differ.

25. I have given my anxious consideration to the matter in hand, particularly since it involves the liberty of a citizen who is entitled to his fundamental rights, including the benefit of Article 21 of the Constitution of India. It is well settled that the golden principle of bail jurisprudence is that "bail is the rule and jail an exception". However, it is also to be noted that through the evolution of time, without compromising the basic principles of bail jurisprudence, the Courts have also added the aspect of discretionary jurisdiction as regard bail jurisprudence, which calls for cautious exercise by balancing the valuable right of liberty of an individual and the interest of

society in general. Therefore, it is said that consideration for grant or refusal of bail would mostly depend on factors, some of which has been enumerated at para 20 above. Which though it refers to the issue of grant of bail, the same can be applied to a case for refusal of bail too.

26. It is also well settled that consideration for grant or refusal of bail would mainly depend on the facts and circumstances of a particular case. The fact that the recording of evidence is complete in the Nongpoh case, while evidence has not yet been led in the Jowai case, the presumption would arise that given the antecedents of the petitioner herein, the prosecutrix and other witnesses may not be able to give their statement in a congenial atmosphere. In this regard, it would not be out of place to refer to paragraph 26 of **Rajballav Prasad's** case quoted below as:

*“26. We are conscious of the fact that the respondent is only an undertrial and his liberty is also a relevant consideration. However, equally important consideration is the interest of the society and fair trial of the case. Thus, undoubtedly the courts have to adopt a liberal approach while considering bail applications of accused persons. However, in a given case, if it is found that there is a possibility of interdicting fair trial by the accused if released on bail, this public interest of fair trial would outweigh the personal interest of the accused while undertaking the task of balancing the liberty of the accused on the one hand and interest of the society to have a fair trial on the other hand. When the witnesses are not able to depose correctly in the court of law, it results in low rate of conviction and many times even hardened criminals escape the conviction. It shakes public confidence in the criminal justice-delivery system. It is this need for larger public interest to ensure that criminal justice delivery system works efficiently, smoothly and in a fair manner that has to be given prime importance in such situations. After all, if there is a threat to fair trial because of intimidation of witnesses etc., that would happen because of wrongdoing of the accused himself, and the consequences thereof, he has to suffer. This is so beautifully captured by this Court in Masroor v. State of UP, (2009) 14 SCC 286 in the following words: (SCC p. 290, para 15)*

*“15. There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be*



*absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case. It is possible that in a given situation, the collective interest of the community may outweigh the right of personal liberty of the individual concerned. In this context, the following observations of this Court in Shahzad Hasan Khan v. Ishtiaq Hasan Khan, (1987) 2 SCC 684 are quite apposite: (SCC p. 691, para 6)*

*“6... Liberty is to be secured through process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution.”*

27. In view of the above, I am of the opinion that the petitioner has not been able to make out a case for grant of bail.

28. This petition is accordingly dismissed.

29. Before parting with this case, it is observed herein that the High Court of Meghalaya vide Notification No. HCM.H/03/2013/Estt/2007-A, dated Shillong 21<sup>st</sup> August, 2020 has directed all Subordinate Courts in the State of Meghalaya to resume physical functioning of Courts. In such a situation, the contention of Mr. K. Paul, learned counsel for the petitioner that the prevailing pandemic situation would not allow speedy disposal of cases is unfounded. Situated thus, I would like to impress upon the Trial Courts that in the interest of speedy disposal of the case, the outer limit of 6(six) months from the date of this order may be adhered to while disposing of the two cases at Nongpoh and Jowai respectively.

30. Registry is directed to send copy of this order to the learned Special Judge (POCSO), Nongpoh and Jowai respectively for compliance.

31. With the above, these instant applications are disposed of by this common order. No cost.

**Judge**

Meghalaya  
27.08.2020  
"D. Nary, PS"

