

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 6 of 2020

Date of Decision: 13.07.2020

Shri Willford Myllem

Vs.

State of Meghalaya

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K.Ch. Gautam, Adv.

For the Respondent(s) : Mr K. Khan, P.P. 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

1. On 13.06.2020 at about 9.30 AM, an incident of alleged molestation occurred at the Farmer's market Upper Shillong, where the victim had alleged that when she was alone at the stall of the accused carrying tea, the accused touched her private parts, in reaction to which she slapped him and then went back to her room. On the same day, the FIR was filed before the Officer-In-charge Jhalupara Police Outpost.

2. Accordingly, a police case being Lumdiengjri P.S. Case No 62 (6) 2020 under Section 8 of the POCSO Act was registered and the accused, Shri Edwin Nongkynrih was arrested, but when he was medically examined, he was advised to be hospitalized for medical treatment and is still in the Civil Hospital, Shillong till date.

3. The petitioner herein who is the son of the accused has then approached this Court with this instant application under Section 439 Cr.P.C

with a prayer for grant of bail to the accused person.

4. The version of the incident given by the petitioner is that on the fateful day, the accused person is running a small meat stall at the Farmer's market, Upper Shillong and the alleged victim is helping her mother run the tea stall located therein. Since the place was slippery, when the alleged victim came to serve him tea, he slipped on the floor and accidentally caught hold of the alleged victim for support to which the alleged victim reacted by screaming and this led to the people who were around the area to inform the police and they had also assaulted the accused which resulted in his being admitted in the hospital by the police.

5. It is also stated that the after lodging of the FIR, the victim and her family members along with other elders of the village and after discussion and inquiry about the said incident, they realized that the incident was accidental and the whole matter was blown out proportion and accordingly, the victim and her family members entered into a compromise with the Petitioner herein on behalf of the accused and in the said compromise agreement, the victim had indicated that she does not want to proceed with the matter.

6. In the meantime, the petitioner moved a bail application before the Court of the learned Special Judge, POCSO at Shillong and the Court after hearing the parties rejected the said bail application on 03.07.2020.

7. The petitioner has also stated that the condition of the accused being serious, the Joint Director of Health Services (SS), Civil Hospital, Shillong has advised that the accused be shifted to the private ward for better treatment, but the learned Special Judge, POCSO has called for a detail medical report resulting in the accused who is about 80 years of age with no proper medical attention to be kept in the UTP ward of the hospital.

8. Another averment of the petitioner is that the accused is an old man of 80 years and is therefore not capable of committing a crime of such nature

and the Investigating Officer has failed to carry out proper investigation in this respect. Even the guidelines of the Apex Court given in the case of *Arnesh Kumar v. State of Bihar: (2014) 8 SCC 273*, which mandated issuance of notice before arrest in cases where the maximum punishment is less than 7 years, in the instant case, the accused having been booked under Section 8 of the POCSO Act, the maximum punishment is 5 years was not followed, the I/O having just prepared a check list and has arrested the accused without any credible reasons.

9. The learned counsel for the petitioner, Mr. K.Ch. Gautam in his submission has referred to the averments made in the petition, some of which have been noted above and besides this has also submitted that the accused is an old man of 80 years and admittedly is sick and requires dedicated medical treatment, which could be provided adequately if the relatives of the accused are able to take care of him, and as such, he may be enlarged on bail in this regard.

10. It is also the submission of the learned counsel that the whole incident was because of an accident which the alleged victim had also acknowledged in her statement under Section 164 Cr.P.C. The fact that there is a compromise between the parties in this regard, though legally not binding has also to be taken note of by this Court as far as grant of bail is concerned.

11. It is therefore prayed that this application may be allowed and the accused may be enlarged on bail with any conditions deemed fit and proper to be imposed by this Court.

12. Also heard Mr. A.H. Kharwanlang, learned GA for the State respondent who has strongly opposed this bail application on the ground that the offence alleged is serious being a crime against a minor and the I/O has also reported that there are incriminating materials against the accused, and as such, he may not be enlarged on bail at this stage.

13. Upon hearing the learned counsels for the parties, on perusal of the application as well as the case diary, which was duly produced before this Court, what could be ascertained as factual is that an incident occurred on 13.06.2020 involving the accused Shri Edwin Nongkynrih and a minor girl following which an FIR was lodged with the police.

14. The case being registered as Lumdiengjri P.S. Case No 62 (6) 2020, investigation was launched and on the statement of the complainant, the accused was arrested. However, he could not be sent to judicial custody as he was apparently assaulted at the place of incident and having sustained injuries, he was referred to Civil Hospital, Shillong for treatment.

15. In the meantime, it appears that the parties have come to a compromise, inasmuch as, the alleged victim had changed her version of the incident to conclude that it could be a case of an accident and not intentional on the part of the accused. This was also reflected in her statement under Section 164 Cr.P.C before the Magistrate.

16. As submitted by the learned counsel for the petitioner, though the compromise arrived at between the parties has no legal bearing on the case in hand, however for the purpose of bail, the conduct of the parties vis-a-vis the nature of the case may be considered by the Court.

17. The I/O has stated the age of the accused as 70 years, however the birth certificate of the accused enclosed in the application would show that he was born on 14.02.1940, which would make him about 80 years old.

18. It has also been stated at the bar that though this Court had directed the accused to be admitted in a private ward at the Civil Hospital, Shillong, as was advised by the Joint Director, Health Services (SS) Civil Hospital, Shillong, the accused could not be accommodated in a private ward as there is no vacancy and is now in the general ward.

19. The learned counsel for the petitioner has also cited the case of *Eni*

v. State of Kerala: 2019 SCC Online Ker 1407 wherein vide order dated 03.05.2019, the Kerala High Court considering the bail application filed under Section 439 Cr.P.C involving an accused who is 70 years old accused of committing unnatural sexual intercourse with a boy aged 13 years, the Court considering the fact that the accused is aged about 70 years and is having various illnesses, therefore bail was granted on conditions imposed.

20. Here is a similar case, albeit the offence alleged not being as serious as appeared in the Kerala case and as such, the accused may be enlarged on bail asserts the learned counsel.

21. At this point of time, this Court is also made aware of the directions of the Apex Court in *Suo motu Writ Petition (C) No. 1 of 2020 in RE : Contagion of Covid 19 Virus in Prisons*, though in a different context, to contain the spread of the COVID-19 virus in prisons, a direction was given that each State/Union Territory shall constitute a High Powered Committee to determine which class of prisoners can be released on parole or an interim bail and also for release of prisoners who have been convicted or are under trial for offences for which prescribes punishment is up to 7 seven years or less.

22. In this case, technically the accused is an Under Trial Prisoner who has been accused of an offence under Section 8 POCSO Act which prescribes for punishment with imprisonment for a term which shall not be less than 3 years, but which may extend to 5 years.

23. In view of the above taking everything into consideration, this Court is convinced that at this stage, the accused may be enlarged on bail.

24. Accordingly, the accused Shri. Edwin Nongkynrih is hereby directed to be enlarged on bail on the following conditions:

- i. That he will produce surety of ₹ 20,000/- (Rupees twenty thousand) only with two sureties of like amount.
- ii. That he will not abscond or tamper with the evidence or

witnesses.

- iii. That he will cooperate with the I/O as and when required.
- iv. That he will not leave the jurisdiction of India without due permission of the I/O or the Court concerned.

25. The bail bond and relevant papers are to be produced before the Court of the learned Special Judge (POCSO) Shillong who will pass necessary orders for release of the accused if not required in any other case.

26. With the above, this application is accordingly allowed.

27. Registry to return the C.D.

28. Application stands disposed of. No cost.

Judge

Meghalaya
13.07.2020
"D. Nary, PS"

