

Serial No. 3 & 4
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 26 of 2020 with
BA No. 27 of 2020

Date of Decision: 26.11.2020

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| Shri. Balajeid Lang Dorphang | Vs. | State of Meghalaya. |
| Shri. Balajied Lang Dorphang | Vs. | State of Meghalaya. |

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

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| For the Petitioner/Appellant(s) | : | Mr. K. Ch. Gautam, Adv. |
| For the Respondent(s) | : | Mr. R. Gurung, GA. Mr. H. Abraham, GA. |

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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

1. This matter has been taken up via video conferencing.
2. This is the 5th bail application filed on behalf of the accused/UTP Shri. Julius Kitbok Dorphang who is in judicial custody for about 3 years and 10 months or so. The said accused is facing trial in two courts, one before the Special Judge (POCSO) at Nongpoh and another before the Special Judge (POCSO) at Jowai. The genesis of the matter stemmed from a complaint filed on 23.12.2016 by the Chairperson, State Commission for Protection of Child Rights, Meghalaya to the Superintendent of Police, East Khasi Hills District, Shillong to the effect that the accused had illicit sexual intercourse with a minor girl, which is a violation of the child's right to life and dignity.

3. In this regard, a criminal case was registered being Laitumkhrah P.S. Case No. 239(12) of 2016 u/s 366(A) IPC R/W Section 3(a)/4/5 of the POCSO Act and Section 5 of the ITP Act.

4. A second complaint was filed on 05.01.2017, again by the Chairperson, State Commission for Protection of Child Rights, Meghalaya, alleging that the accused Shri Julius Kitbok Dorphang 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 Umiam P.S. Case No. 1(01)2017 u/s 376(2) (i)(n) IPC R/W section 4/6/17/ of the POCSO Act and Section 5 (I) of the Immoral Traffic (Prevention) Act, 1956.

5. The petitioner herein is the Nephew of the said accused Julius Kitbok Dorphang who has filed two separate bail applications both under Section 439 Cr.P.C before this Court, registered as B.A. Case No. 26 of 2020 relatable to the Umiam P.S. Case No. 1(01)2017 which was subsequently taken up by the learned Special Judge (POCSO), Nongpoh in Special POCSO Case No. 2 of 2017 and another application being B.A. Case No. 27 of 2020 related to the Laitumkhrah P.S. Case No. 239(12) of 2016 and numbered as Special POCSO Case No. 20 of 2018 before the learned Special Judge(POCSO), Jowai. Both matters being connected, it is deemed convenient and expedient to take up the two together and to pass a common order herein.

6. Heard Mr. K.Ch. Gautam, learned counsel for the petitioner who has submitted that the accused is in custody for three years and ten months. It is also submitted that the accused has been referred to NEIGRIHMS and was admitted in the ICCU since his health condition has deteriorated to the extent that he requires special treatment, which could be afforded by the family members in any private hospital for which prayer for enlargement on bail is made herein.

7. It is also submitted that the accused was hospitalized for more than a month and there is no sign of any improvement and as on 24.11.2020, it is

understood that more tests are required to be carried out on the accused and his condition has further deteriorated for which initially, the petitioner has made a prayer before this Court for calling of the latest medical report from NEIGRIHMS, which is now produced before this Court.

8. Another limb of argument of the learned Counsel is that in the Trial Courts, the evidence of the alleged victim has already been recorded and as such, the accused if released on bail, will not be able to intimidate the victim or to tamper with evidence.

9. To support his contention the learned Counsel has cited the case of *Sanjay Chandra v. CBI: (2012) 1 SCC 40* at paragraphs 21, 22 and 40, *Dipak Subhashchandra Mehta v. CBI & Anr: (2012) 4 SCC 134* at paragraph 35, *Tarun Tejpal v. State of Goa: (2015) 14 SCC 481* and *Shri Joplangki Dkhar v. State of Meghalaya & Anr: BA No. 17 of 2018* at paragraph 5.

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

11. Mr. R. Gurung, learned GA in his submission before this Court has opposed the prayer for grant of bail on behalf of the accused Shri. Julius Kitbok Dorphang on the ground that many similar applications have been filed on account of sickness, however the accused being treated at NEIGRIHMS is well taken care of as the said Institution is one of the best in the North-East and as such, there is no requirement for granting bail to the accused at this juncture.

12. Before referring to the submission and contention of the parties, it would be just and proper for this Court to first take the medical report on the condition of the accused Shri. Julius Kitbok Dorphang submitted by the Medical Superintendent NEIGRIHMS on board.

13. Briefly stated, the medical report details the complaint of the patient/accused which includes chest pain, giddiness and a history of presyncope. On examination, the patient shows Sinus Bradycardia, which is a type of slow heartbeat, the patient's heartbeat being at a minimum of 40 per minutes with 2 Atrial Premature Complexes (APC) and has been planned for Electrophysiological Study (EPS) followed by permanent pacemaker if required. MRI brain done on 19.11.2020 also showed chronic right cerebellar infarct with ischemic white matter changes (Fazekas grade II).

14. What can be understood from the above is that the patient/accused is undergoing treatment for what has been diagnosed are symptoms of stroke and dementia, which if not properly attended to, may aggravate.

15. In the case of **Joplangki Dkhar (supra)** this Court at paragraph 5 of the same has opined as under:

“5. The medical status report is self-explanatory. Life is precious and is guaranteed under Article 21 of the Constitution. No doubt heinousness of the crime cannot be ignored. However, when the health condition of the alleged accused (petitioner herein) is critical then in that eventuality discretion has to be exercised in a reasonable manner. The medical status report as quoted above, reveals as to what is the condition of the petitioner (accused), further incarceration may have serious effect on his life. The accused can be tried if proved to have committed the offence can be convicted/sentenced but in case accused loses his life, who can be tried then convicted or acquitted.

16. As far as consideration of bail is concerned, the Hon'ble Supreme Court in the case of **Sanjay Chandra (supra)** at paragraph 40 has held as under:

“40. The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused

constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required”.

17. While citing the above observations, this Court is conscious of the fact that bail in cases of offences involving women and children is not easily granted, more particularly taking into account the vulnerability of the victim if faced with the knowledge that the alleged perpetrator is at large, the fear of being intimidated being one of them. However, facts and circumstances of each case has to be considered so as to balance the right of the accused/UTP with societal interest. It is also not disputed that grant of bail on ground of medical exigency is acceptable under the circumstances.

18. Having considered all aspect of the matter, this Court is of the considered opinion that the present medical condition of the accused/UTP qualifies as a change in circumstances, which would then enable the prayer of the petitioner herein for grant of bail to the accused/patient to be considered.

19. In view of the above, these applications are hereby allowed.

20. The accused Shri. Julius Kitbok Dorphang is hereby enlarged on bail on the following conditions:

- i) That he shall execute a personal bond of ₹ 50,000/- (Rupees fifty thousand) along with two solvent sureties of like amount, to the satisfaction of the respective Trial Courts, that is, one set before the Court of the Special Judge (POCSO), Nongpoh and one before the Special Judge (POCSO), Jowai;
- ii) That he shall not abscond but shall be present in Court as and when required;
- iii) That he shall not leave the jurisdiction of India without prior permission from the Trial Courts.

21. On being presented with the relevant papers and documents, the learned

Trial Courts, that is, the Special Judge (POCSO), Nongpoh and the Special Judge (POCSO), Jowai respectively, are to issue release notice accordingly.

22. With the above these applications are hereby disposed of by this common order. No Cost.

Judge

Meghalaya

26.11.2020

"N.Swer, Stenographer"

