

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 2 of 2021

Date of Decision: 27.04.2021

Smti. Namita Roy Vs. State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K.C. Gautam, Adv.
For the Respondent(s) : Mr. K. Khan, PP. 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. The petitioner herein is the mother of Shri. Aniketh Roy who is currently in judicial custody in connection with Rynjah P.S. Case No. 12 (02) of 2021 under Sections 3 (b) (d)/4/5 (m)/6 of the POCSO Act.

2. The petitioner has approached this Court with this instant application under Section 439 Cr.P.C with a prayer for grant of bail on any condition as this Court may deem fit and proper to impose.

3. Heard Mr. K.C. Gautam, learned counsel for the petitioner who has submitted that the applicant was arrested on the strength of an FIR dated 09.02.2021 filed by one Shri. Sanjay Sanyal alleging that his minor daughter of 5(five) years old was molested by the applicant's son on 09.02.2021 at about 2:30 PM. Accordingly, police on receipt of the said FIR had registered a case under Sections 3 (b) (d)/4/5 (m)/6 of the POCSO Act.

4. The learned counsel has further submitted that the accused person was falsely alleged and implicated in the said POCSO case simply because there was some trivial dispute between the applicant's family and the complainant's family, since they were next door neighbors, their houses being separated only by a common wall.

5. It is also submitted that the accused being a college student presently pursuing his graduation studies at Umshyrpi College, Shillong in the Bachelor of Arts, 5th Semester under NEHU, is also to appear his final examination, which commenced from 15th March, 2021.

6. It is also the submission of the learned counsel that the applicant had earlier moved two related bail applications before the Special Judge (POCSO), Shillong, which applications were rejected vide order dated 04.03.2021 and 09.03.2021 respectively.

7. The learned counsel has finally submitted that the process of investigation is already complete and what remains is the filing of charge sheet, which has taken considerable time for which the I/O has made a prayer before the Court for remand from time to time on a mechanical basis without any application of mind.

8. The accused being a permanent resident of R.R. Colony Rynjah, Shillong and a student, there is no likelihood of absconding or tampering with the witnesses or evidence and as such, this Court may be pleased to allow the prayer of the applicant and to enlarge the accused on bail with any condition as this Court may deem fit and proper.

9. Also heard Mr. K. Khan, learned PP who has submitted that this Court on an earlier date had called for the C.D to be produced, which is accordingly produced herewith. It is also submitted that the Court may peruse the C.D and necessary orders may be passed.

10. Having heard the learned counsels for the parties, I have also perused

the contents of the C.D produced before me.

11. The factual aspect of the matter has been narrated above, which is also reflected in the C.D. However, what can be seen from the C.D is that the I/O had taken steps firstly, for sending the victim and the accused for medical examination and secondly, for recording of statements under Section 161 Cr.P.C of all the relevant witnesses, including the accused and the alleged victim. It is also seen that the victim has also been examined by the learned Judicial Magistrate who has taken down her statement under Section 164 Cr.P.C.

12. It is well settled that the veracity of the evidence has to be proved in a proper trial and could not be accepted at face value. However, it is also well settled that for consideration of bail, prima facie evidence has to be considered upon, which the Court can come to a finding or observation as to the seriousness of the offence, the antecedent of the accused, the age of the victim, the relationship if any, between the accused and the victim and also the fact that the accused, if enlarged on bail would threaten the victim and the witnesses or tamper with the evidence.

13. On this premise, what can be observed here is that the victim is a minor girl of 5(five) years old who is apparently innocent and could not comprehend the act that was perpetrated on her. At this point of time, her statement cannot be discarded or ignored, which if accepted by this Court, prima facie would reveal that a heinous offence was alleged to have been committed.

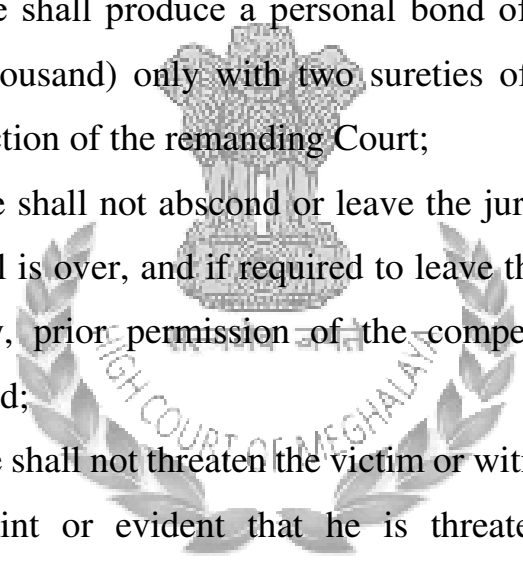
14. What would also weigh heavily on this Court is the fact that the accused and the victim are next door neighbor and considering the psychological impact on the victim child, there may be a possibility of the accused threatening the victim.

15. However, as submitted by the learned PP that the accused is a young man who is a student and is to appear for his exams, his antecedent have revealed no criminal background and as such, this Court may consider this

aspect of the matter as well. It was also submitted that investigation having been completed and only charge sheet is to be filed, which will be done so within few days, therefore nothing remains for the accused to be questioned.

16. Having given my anxious consideration to the matter, taking into account the fact that the accused is no longer required for questioning, therefore if he abides by the conditions imposed by this Court, the principle of bail and not jail can be applied in this case.

17. Under the circumstances, this Court is inclined to allow this application and the accused is hereby enlarged on bail on the following conditions:

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- i) That he shall produce a personal bond of ₹ 50,000/- (Rupees fifty thousand) only with two sureties of like amount to the satisfaction of the remanding Court;
 - ii) That he shall not abscond or leave the jurisdiction of India till the trial is over, and if required to leave the jurisdiction of this country, prior permission of the competent Court is to be obtained;
 - iii) That he shall not threaten the victim or witnesses. If there is any complaint or evident that he is threatening the victim or witnesses, his bail will stand automatically cancelled on a report by the I/O in accordance with law;
 - iv) That he shall appear before the I/O as and when required.

18. In view of the above, this application is hereby disposed of. No cost.

19. Registry is directed to return the C.D.

Judge

Meghalaya
27.04.2021
"D. Nary, PS"