HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Petn. No. 32 of 2021

Date of Decision: 24.06.2021

Shri. Julius Kitbok Dorphang	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. N.D. Chullai, AAG. with
Mr. A.H. Kharwanlang, GA.
Mr. S. Sengupta, Addl. Sr. GA.

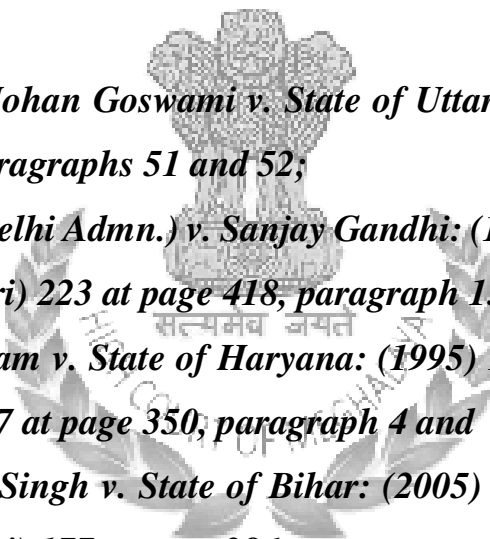| i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

1. Matter taken up today via video conferencing.

2. The impugned order dated 21.06.2021 was passed by the learned Special Judge (POCSO), Ri-Bhoi District, Nongpoh in Spl. (POCSO) Case No. 2 of 2017 to the effect that the bond executed by the petitioner/accused Shri Julius Kitbok Dorphang and his two sureties stands cancelled in terms of Section 446A (a) Cr.P.C in exercise of powers vested under Section 439 (2) Cr.P.C. Consequently, a NBWA was issued against the petitioner/accused herein and the matter was fixed for execution of the said NBWA.

3. A perusal of the impugned order which was assailed before this Court in this instant petition would show that the reasons cited by the learned Trial Court, which culminated in issuance of the said NBWA was because of the conduct of the accused/petitioner who fails to appear before the Trial Court on several dates.

4.   Heard Mr. K. Ch. Gautam, learned counsel on behalf of the petitioner who has submitted that the impugned order, particularly the cancellation of the bail granted to the accused/petitioner by this Court could not have been done by the learned Trial Court without hearing the accused/petitioner in the matter. The learned counsel further submits that there was no deliberate intention by the accused/petitioner not to appear before the Trial Court, but because of the fact that hearing of the matter was taken up via video conferencing or in virtual mode, the accused/petitioner could not be communicated at the relevant time due to technical glitches and for no fault of his, he was declared to be absent from the proceedings.

5.   In support of his submission, the learned counsel has cited the following cases:

   i)   *Inder Mohan Goswami v. State of Uttaranchal: SCC I (2007) 12 at paragraphs 51 and 52;*

   ii)   *State (Delhi Admn.) v. Sanjay Gandhi: (1978) 2 SCC 411: 1978 SCC (Cri) 223 at page 418, paragraph 13;*

   iii)   *Dolat Ram v. State of Haryana: (1995) 1 SCC 349: 1995 SCC (Cri) 237 at page 350, paragraph 4 and*

   iv)   *Gurdev Singh v. State of Bihar: (2005) 13 SCC 286: (2006) 2 SCC (Cri) 177 at page 286.*

To impress upon this Court that the impugned order cannot stand the scrutiny of law, inasmuch as, the liberty of the accused/petitioner has been curtailed by the same without due process of law, and that as submitted earlier, the cancellation of bail without affording to the accused an opportunity of being heard is an aberrant to the due process of law.

6.   However, it is further submitted that the intention of the accused/petitioner is to cooperate with the process and to appear before the Court as and when required and in this regard, the learned counsel hereby gives an unconditional undertaking to appear before the Court as and when the matter is fixed for hearing.

7.   Per contra, Mr. N.D. Chullai, learned AAG on behalf of the State respondent has submitted that the Trial Court has rightly passed the impugned order, wherein the Trial Court has detailed the conduct of the accused/petitioner in not appearing before the Court as and when the matter was fixed and the reasons cited was not plausible to convince the Court to grant adjournment. He also submits that the Trial Court has also noticed that the accused/petitioner was absent on a number of occasions and has appeared before the Court intermittently.

8.   The learned AAG has also led this Court to the provisions of Section 309 Cr.P.C and has pointed out that Sub-Section 1 of the same provides that an inquiry or trial relating to offence under Section 376 shall be completed within a period of two months from the date of filing of the charge sheet, this being a similar case under the POCSO Act, it is imperative that the trial has to be conducted speedily. Proviso (a) to Sub-Section 2 was also pointed out by the learned AAG to justify the impugned order passed.

9.   However, in course of hearing, the parties have mutually consented that for ends of justice, so as not to prolong the trial and considering the fact that the matter is at the fag end of its conclusion requiring only the argument of the accused, the Trial Court may be directed to proceed with the hearing on the undertaking of the accused or his counsel that he will definitely appear on the next date fixed for hearing.

10.   Having heard the parties, considering the facts and circumstances of the case, and keeping in mind the importance of the trial to be completed at the earliest and also the fact that the accused has not willfully absconded or is not to be found, but is willing to appear before the Trial Court as and when required, this Court without discussing on the merits of this instant petition is of the considered view that this mater can be laid at rest at this juncture.

11.   Consequently, the impugned order is hereby set aside and quashed and

the learned Special Judge (POCSO), Ri-Bhoi District, Nongpoh is hereby directed to recall the NBWA issued, after which the accused/petitioner is allowed to join trial and to be heard taking into consideration the undertaking given by the learned counsel for the petitioner at the Bar.

12.   The petitioner/accused Shri Julius Kitbok Dorphang is hereby directed to appear before the Trial Court to be heard, for which the learned Trial Court is also directed to take up the matter for hearing on 28.06.2021.

13.   In view of the above, this petition is hereby disposed of.

14.   Registry is directed to issue copy of this order to the learned Court of the Special Judge (POCSO), Ri-Bhoi District, Nongpoh for compliance.

Judge

Meghalaya
24.06.2021
"D. Nary, PS"