

Serial No. 05
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 19 of 2021

Date of Decision: 20.01.2022

Smti Kharilian Sohphoh Vs. State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. N. M. Mansuri, Adv.
For the Respondent(s) : Mr. R. Gurung, GA.

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

1. The petitioner who is the mother of the Shri Disporlin Sohphoh has approached this Court with an application under section 439 Cr.PC praying for grant of bail on behalf of her said son who is an accused in Mawkyrwat Women PS Case No. 18(11) 2021 under Section 3(a)/4 POCSO Act.

2. Heard Mr. N.M. Mansuri, learned counsel for the petitioner who has submitted that an FIR was filed on 01.11.2021 by one Shri Pius Marwein to the effect that information was given citing an incident which occurred on 26.10.2021 at around 7:00PM or so, involving his daughter aged about 17 years who was said to have been raped by one Wankyrshan Thongni, since deceased and in which incident the accused Shri Disporlin Sohphoh was also present. The informant has also stated that the accused person and the said (L) Wankyrshan Thongni had taken his daughter from a nearby house to the forest

and when he found his daughter, she was half conscious with visible bruise marks on the chin and upper region of her chest. It is also stated that Wankyrshan Thongni had unfortunately passed away at Civil Hospital, Shillong and action is requested to be taken against Disporlin Sohphoh.

3. On the basis of the said FIR, the Officer-In- Charge Mawkyrwat Women PS, South West Khasi Hills, registered a case being Mawkyrwat Women PS Case No. 18(11)2021 as mentioned above and the accused Disporlin Sohphoh was arrested in connection with the said case.

4. Mr. Mansuri has submitted that in the said FIR, nothing was said about his involvement in the act of alleged rape of the alleged victim but his name was mentioned only to the extent that he was present when the alleged victim was raped by (L) Wankyrshan Thongni and as such, the accused son of the petitioner could not have been implicated in a case under POCSO Act. According to the version of the accused person, the victim girl and the deceased Wankyrshan Thongni were having an affair and the accused person was requested to accompany them, however, on reaching the place of occurrence, something went wrong between the alleged victim and the deceased resulting in the victim pushing the deceased from a hilltop who fell down into a gorge and sustained severe injuries. The accused person immediately rushed to help the deceased and managed to shift him to a nearby Primary Health Centre from where he was referred to Shillong Civil Hospital. In the meantime, the family members of the deceased were informed about the incident, but ultimately the deceased succumbed to his injuries.

5. The accused person is not at all involved in the alleged offence and was falsely implicated by the complainant to hide the fact that the alleged victim girl was involved in the death of the deceased who was her boyfriend.

6. It is therefore prayed that this application may be allowed and the accused person will abide by any condition to be imposed by this Court if enlarged on bail.

7. Also heard Mr. R. Gurung, learned GA who has submitted that on being directed by this Court, the case diary of Mawkyrwat Women PS Case No. 18(11)2021 is duly produced before this Court and on perusal of the same, this Court would come across the statement of the alleged victim under Section 161 Cr.PC as well as the statement under Section 164 Cr.PC in which the victim has clearly narrated the events leading to the act of rape committed upon her. Infact, the victim has clearly stated that both the accused persons herein who is known as Bahduh and the deceased known as Kyrshan had taken turns in raping her on the said day of the occurrence. The victim has also narrated that she had struggled with Kyrshan whom she managed to kick resulting in his fall. The accused person herein had also threatened to kill her if she informed anyone about the incident. Later she remembered that her father pulled her hands and also that she was taken to the police station.

8. In view of the fact that the victim girl had clearly mentioned the involvement of the accused person herein therefore, this Court may not consider the prayer of the petitioner at this juncture as there is every possibility that the accused person may threaten the victim or tamper with the evidence and witnesses as his place of residence is near the residence of the victim, submits the learned GA.

9. This Court has carefully taken note of the submission of the learned counsels for parties and have also perused the case diary. It is well settled that the First Information Report (FIR) would only contain relevant information with regard to an incident or the commission of a crime and may include the name(s) of the perpetrator(s) or may refer to unknown persons who are responsible for commission of the alleged crime. However, at the initial stage of the case, it is not required or necessary for a complete and detailed information to be noted down in the FIR. The fact that the actual involvement of the accused person herein has not been noted down in the FIR filed by the father of the victim girl would not absolve him or indicate that he is not involved in the alleged offence since it is a matter of investigation which

includes recording of statement of relevant witnesses, including the victim and the alleged perpetrator(s) which would allow the Investigating Officer to come to a conclusion as to who is exactly involved in the alleged incident.

10. In this instant case, apart from the involvement of the deceased Wankyrshan Thongni, prima facie the complicity of the accused person has also surfaced particularly from the statement of the victim which cannot be disbelieved at this juncture subject to contrary evidence if any at the time of the trial.

11. The stage of investigation has also not been completed and the I/O has to be given a free hand to fully investigate into the matter and to come to any conclusion to be indicated in the final report to be filed before the concerned authority.

12. Given the nature and gravity of the offence, this Court is of the considered opinion that at this point of time bail cannot be granted to the accused person mentioned above.

13. This petition is accordingly dismissed as devoid of merit.

14. Registry is directed to return the case diary.

15. Petition disposed of. No cost.

Judge

Meghalaya

20.01.2022

"N. Swer, Stenographer"