

**Serial No. 05**  
**Regular List**

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

BA. No. 23 of 2022

Date of Decision: 23.12.2022

Shri Taleb Ali Sheikh

Vs.

State of Meghalaya & Anr.

**Coram:**

**Hon'ble Mr. Justice W. Diengdoh, Judge**

**Appearance:**

For the Petitioner/Appellant(s) :

Mr. J. Shylla, Adv.

Mr. M.L. Nongpiur, Adv.

For the Respondent(s) :

Mr. H. Kharmih, Addl. PP.

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

**J U D G M E N T (O R A L)**

1. Heard Mr. J. Shylla, learned counsel for the petitioner who has submitted that an FIR dated 02.01.2021 was lodged by the respondent No. 2 herein, informing the Officer In-Charge Bajengdoba Police Station, North Garo Hills, that his minor daughter aged about 14 years was missing from home since 01.01.2021. On receipt of the said information, the police have registered a case being Women PS, NGH, Mendipathar, Case No. 2 of 2021 under Section 366A/343/376(2)(i)(n) IPC read with Section 3(a)/4 POCSO Act, 2012.

2. The matter being taken under investigation, the Investigating Officer (I/O) has firstly, facilitated the medical examination of the alleged victim and has also recorded the statement of the complainant as well as other relevant witnesses. The petitioner as the accused in the said case was apprehended by the police and was formally arrested on 30.09.2021 and was forwarded to the court concerned who has directed that he be confined in judicial custody, which custody he is presently undergoing till date.

3. The I/O after completion of the investigation, has filed the charge sheet on 22.11.2021, and after narration of the facts and circumstances of the case and the steps taken thereof, in conclusion has opined that prima facie evidences have been established against the arrested person namely Saminur Ali Sheikh, son of Taleb Ali Sheikh for having committed an offence under Section 366A/343/376(2)(i)(n) IPC read with Section 3(a)/4 POCSO Act, 2012 for allegedly kidnapping of a minor girl from lawful guardianship, wrongful confinement for three days and repeated rape of the said minor girl who is under 16 years of age.

4. The learned counsel has further submitted that the matter was taken cognizance of by the Special Court (POCSO) at Resubelpara, North Garo Hills who has framed the relevant charges against the named accused person and on charges being denied, the matter has then proceeded for recording of the evidence of the witnesses with two of the main witnesses that is, the complainant and the alleged victim girl being duly recorded by the court and discharged. The evidence of another seven witnesses remains to be recorded.

5. The learned counsel has also submitted that from the materials on

record, what is evident is that the victim has given conflicting statements as regard the incident when she was examined by the police under Section 161 Cr.PC and also when her statement was recorded by the Magistrate under Section 164 Cr.PC and finally, when she had deposed as PW 1 before the court.

6. It is the contention of the learned counsel that on perusal of the statement of the alleged victim, it is evident that the accused person had neither induces her to go with him since she has stated that on the day of the occurrence, she was called by one Rabha girl who took her in a Tempo (sic vehicle) towards Paikan and Krishnai and thereafter, they went to Lakhipur on the same day and stayed there at night. On the following day, they went to Barpeta and returned to Krishnai. In all this, the alleged victim girl has never stated that the accused person has committed rape on her against her will or consent. Infact, the alleged victim girl in her statement under Section 161 Cr.PC has stated that she met the accused person at Gokul market on 18.12.2020 and was gifted with a mobile phone and SIM card by which she could communicate and keep in contact with the accused person, apart from the fact that they used to meet from time to time.

7. As to the allegation that the accused person has illegally confined the alleged victim girl for three days and that he has forcefully had sexual intercourse with her, the same was denied as according to the accused person, the alleged victim girl was already a major when she had a love relationship with the accused person and on the day of the occurrence she had willfully left her house with her own consent and as such, there is no basis for any allegation of sexual assault or rape against the alleged victim.

8. The learned counsel has however submitted that since the matter has already proceeded for evidence and two of the main witnesses including the alleged victim girl were already examined and discharged, under the changed circumstances, the accused person may be enlarged on bail considering the fact that the next date fixed for evidence is in the month of February, 2023 and apparently the provision of Section 35 of the POCSO Act has not been complied with.

9. It is again further submitted that there is no question of tampering with evidence and also of influencing or coercion of the witnesses at this stage and if released on bail, the accused person would undertake to cooperate with the proceedings and to be present as and when required and also to comply with any other conditions to be imposed by this Court.

10. It is therefore prayed that this Court may be pleased to allow this petition filed by the petitioner herein who is the father of the said accused person Shri Saminur Sheikh.

11. Mr. H. Kharmih, learned Addl. PP appearing for the State respondent has submitted that the materials on record would show that the alleged victim girl was indeed abducted and kidnapped inasmuch as, her statement is very clear when she has mentioned that one Rabha woman had forced her inside the said Tempo with the accused person and the driver already inside the vehicle. The alleged victim girl has also stated that she was forced to take a sedative in the form of a liquid substance upon which she became unconscious and later came to know that she was forcefully married to the accused person by some unknown lawyer.

12. The alleged victim has also narrated the fact that the accused person took her to Lakhipur to the house of his friend where she spends the whole night there in which the accused person had committed penetrative sexual assault on her. She has further stated that the accused person then took her to Krishnai and locked her in his room after which in the evening the parents of the accused person handed her over to her mother.

13. It is these chains of events that has fortified the case of the prosecution and without a doubt, the accused person can be said to have committed the offences alleged and as such, at this point of time he may not be allowed to be out on bail.

14. This Court, on consideration of the submission of the parties, the facts of the case has been narrated by the parties and are also present in the averments made in this petition.

15. The petitioner has stated that the accused person who is his son has been incarcerated in judicial custody for more than a year and considering the fact that the case has reached the evidence stage, therefore there is no impediment if the accused person is allowed to be released on bail.

16. This Court would not go into the merits of the case of the prosecution as the same is being considered by the Trial Court. However, what is required to be considered here is whether the accused person is entitled to be released on bail at this juncture.

17. As has been held by a number of courts in our country, the object of bail is to secure the attendance of the accused at the trial and while granting bail, the discretion solely lies with the court, albeit guided by what

is apparent from the facts and circumstances of a particular case.

18. It is also a well settled principle of law that while dealing with an application for grant of bail, it is the duty of the court to consider and take into account certain factors like the nature and gravity of the accusation, the severity of punishment in case of conviction and also the apprehension that if released on bail, the accused may jump bail and abscond.

19. This Court in a number of cases involving grant or refusal of bail has relied on the decision of the Apex court in the case of “**Sanjay Chandra v. CBI**” reported in (2012) 1 SCC 40, wherein at para 21, 22 and 23, the Hon’ble Supreme Court has observed that: -

*“21. In bail application, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.”*

*22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper*

*with the witnesses if left at liberty, save in the most extraordinary circumstances.*

*23. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.”*

20. Incarceration during trial is not punitive but only to secure the presence of the accused and if his presence could be assured, it would be wrong on the part of the court to unnecessarily detain an accused in custody after giving due regard to the attending factors.

21. Keeping in mind the mandate of Article 21 of the Constitution of India which guarantees freedom to every citizen save and except by due procedure prescribed by law, curtailment of personal liberty during trial has to be limited to only those cases which are absolutely essential and as observed above, if there is strong apprehension that the presence of the accused person could not be secured in course of trial.

22. Being conscious of the principles aforementioned, this Court would also reiterate that an accused is said to be innocent until proven guilty and as such, taking everything into consideration, this Court is of the considered view that the accused person may be allowed to go on bail on compliance with the conditions herein mentioned below, if he is not wanted in any other case : -

- (i) That he shall not abscond or threaten or influence the witnesses;
- (ii) That he shall appear before the Court as and when required;
- (iii) That he shall not leave the jurisdiction of India without prior permission of the court;
- (iv) That he shall have no contact whatsoever with the alleged victim girl till the trial is completed; and
- (v) That he shall furnish a personal bond of ₹ 50,000/- (rupees fifty thousand) only with two solvent sureties of like amount to the satisfaction of the Trial Court.

23. With the above, this petition is disposed of. No costs.

**Judge**

Meghalaya  
23.12.2022  
"N. Swer, Stenographer"