

**Serial No. 07**

**Regular List**

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

BA. No. 29 of 2022

Date of Decision: 31.01.2023

Shri Skhem Nongtri

Vs.

State of Meghalaya & Anr.

**Coram:**

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

**Appearance:**

For the Petitioner/Appellant(s) :

Mr. T.L. Jyrwa, Adv.

For the Respondent(s) :

Mr. R. Gurung, GA. and

Mr. H. Kharmih. GA.

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

**ORDER**

1. On 16.05.2022, an FIR was lodged before the Officer-In-Charge Nongkhyllam Police Station, South West Khasi Hills informing the police that the minor daughter of the informant on the previous day i.e on 15.05.2022 at around 5:00 PM, as she was going to the river to draw water, on the way she was accosted by two persons one of whom forcefully raped her and the other thereafter attempted to rape her but could not succeed,

hence the said report.

2. On receipt of the said FIR, a case being Mawkyrwat Women PS Case No. 8(05)22 under Section 3(a)/4 POCSO Act r/w Section 307 IPC was registered and investigation was launched.

3. In course of investigation, one of the accused Shri Borson Nongbri was arrested and is now still in judicial custody. The other accused is said to have absconded and could not be apprehended till date.

4. The Investigating Officer (I/O) had caused medical examination to be conducted on the person of the alleged victim girl and has also recorded the statement of the relevant witnesses in the case. At the conclusion of the investigation, the I/O taking into account the statement, particularly of the alleged victim girl under Section 161 as well as under Section 164 Cr.PC, has come to a finding that a prima facie case against the accused under Section 3(a) and 4 of the POCSO Act has been found well established and the accused person is sent up before the court to stand trial.

5. The accused person Shri Borson Nongbri has preferred bail applications before the Trial Court but the same was rejected and consequently, by this instant application under Section 439 Cr.PC, has approached this Court with a prayer for grant of bail. This application has been filed by the petitioner who is the father of the accused.

6. Heard Mr. T.L. Jyrwa, learned counsel for the petitioner who has submitted that since the charge sheet was filed by the I/O therefore, the process of investigation is completed and there is no scope for the accused

to tamper with the evidence or witnesses, if released on bail.

7. The learned counsel has further submitted that records would show that the alleged victim girl has made contradictory statements in her deposition under Section 161 as well as under Section 164 Cr.PC which are not consistent with whatever she has stated before the Medical Officer who had recorded her statement four hours after the FIR has been filed and who has conducted her medical examination.

8. The story narrated by the alleged victim girl does not evoke any confidence inasmuch as, that at one place she has stated that the accused had forcefully dragged her to the jungle at the place of occurrence and after raping her, he tried to hit her head with a beer bottle but fortunately she managed to escape and ran away. In her statement under Section 161 Cr.PC she has stated that while she was fetching water and returning back home, two men approached her and one of them with a tattoo in his neck proposed to her to be his girlfriend to which she refused. It was thereafter that he grabbed her and pulled her towards the jungle where he forcibly raped her. After he had raped her, he ran away and the other person also approached her to have sex with him but on being refused, he too ran away. It was then that the alleged victim girl ran towards a nearby house and called her sister on the phone where she narrated the incident. This inconsistency would show that the alleged victim girl has not been able to tell the actual facts and thus the accused, son of the petitioner is entitled to bail further submits the learned counsel.

9. The learned counsel for the petitioner has however admitted that

sexual intercourse did occur between the accused person and the alleged victim girl however, the same was consensual and voluntary.

10. Again, the learned counsel for the petitioner has submitted that the case is at the stage of consideration of charges but on account of the fact that one of the accused is still absconding, the matter could not proceed forward for trial and as such, in anticipation of a lengthy trial process, the accused, at this juncture may be allowed to be enlarged on bail with any conditions that this Court may deemed fit and proper to impose.

11. Mr. R. Gurung, learned GA appearing for the State respondent has submitted that a comparison of the statement made by the alleged victim girl before the Medical Officer as well as in her statement under Section 161 and Section 164 Cr.PC, does not reveal that there is any inconsistency as far as the narration relating to the factual events is concerned since the alleged victim girl has clearly stated that she was forcefully raped by the accused person while the other person had attempted to rape her and as such, the contention of the petitioner that the statement of the alleged victim girl cannot be believed has no legs to stand.

12. It is also submitted that the case is serious in nature and even the accused has admitted that he had sexual intercourse with the alleged victim girl, therefore, being a crime against a minor, the accused cannot be enlarged on bail at this stage. This petition being devoid of merit is liable to be dismissed submits the learned GA.

13. This Court has given serious consideration to the submissions

made by the parties and facts as narrated above, not required to be reiterated, what is left is for this Court to conclude as to whether the accused person can be enlarged on bail or not at this juncture.

14. It is to be noted that in the present case, the investigation is over and the charge sheet has been filed with the findings that a prima facie case under the relevant sections of the POCSO Act has been made out against the accused person and as such, this application would be considered on the merits thereof.

15. On perusal of the charge sheet filed by the I/O, it is seen that the I/O has meticulously investigated into the matter and more importantly has examined and noted the statement of the alleged victim girl who is about 16 years or so and therefore cannot be considered to be ignorant of what has transpired. It is also seen that a Test Identification Parade (TIP) was conducted and the alleged victim girl has identified the accused as the perpetrator of the crime. Even so, the accused himself has admitted to having sexual intercourse with the girl while her version of the incident is that of rape. There is no whisper as far as the alleged victim girl is concerned that the sexual act was voluntary or consensual.

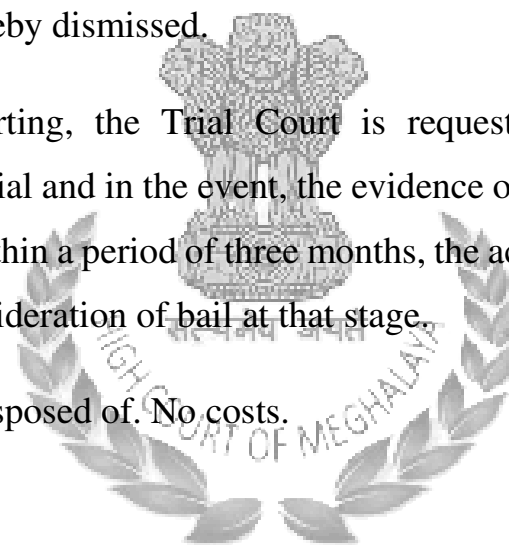
16. In view of the above observations, one of the primary factors or consideration while dealing with an application for bail being the gravity and serious nature of the offence, rape would certainly be considered as serious in nature particularly if perpetrated upon a child or a minor who is below 18 years of age.

17. Contrary to the submission of the learned counsel for the petitioner, the I/O in the charge sheet has also indicated that the accused in question was also absconding soon after the incident and was finally apprehended by the police and sent to judicial custody. This would reflect on the character of the accused and there is no guarantee that he may not abscond if enlarged on bail.

18. This Court is of the opinion that at this juncture, this application for grant of bail cannot be considered. This petition is accordingly devoid of merit and is hereby dismissed.

19. Before parting, the Trial Court is requested to expeditiously proceed with the trial and in the event, the evidence of the witnesses could not be recorded within a period of three months, the accused may approach this Court for consideration of bail at that stage.

20. Petition disposed of. No costs.



**Judge**

Meghalaya

31.01.2023

"N.Swer, Stenographer"