

Serial No. 06
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 62 of 2023

Date of Decision: 28.12.2023

Shri. Rubal Islam

Vs.

State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S.A. Sheikh, Adv.

For the Respondent(s) : Mr. A. Kumar, Advocate General
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

JUDGMENT (ORAL)

1. Heard Mr. S.A. Sheikh, learned counsel for the petitioner.

2. It is the submission of the learned counsel that the accused Shri. Atabor Islam who is undergoing trial in connection with Special POCSO Case No. 4 of 2022 before the court of the learned Special Judge (POCSO), East Garo Hills District was arrested in such connection on 28.04.2022 based on an FIR filed by the survivor and is still in custody till date which period is about 20 months or so.

3. The learned counsel has submitted that the accused person is a businessman dealing in the business of selling fish and dry fish and also in the business of dealing with sale and purchase of betel nut, such part of the business being looked after by one Shri. Rambo N. Sangma.

4. The learned counsel for the petitioner has further submitted that a dispute arose between him and Shri. Rambo N. Sangma as a result of which he was beaten up by some person at the behest of such Shri. Rambo N. Sangma on 27.4.2022 at Songsak, East Garo Hills.

5. Again, the learned counsel has submitted that the said Rambo N. Sangma fearing that an FIR may be filed against them had instigated his maid who was working with him at his residence to file an FIR against the said accused person alleging sexual assault. On the said FIR being filed, the police had registered a case being Williamnagar Women P.S. Case No. 8(4) of 2022 and on investigation being completed, a chargesheet was filed on 31.05.2022 finding a prima facie case being established against the accused person herein, particularly under Section 8 of the POCSO Act and for which he was directed to stand trial before the concerned court. The stage of the trial is at the evidence stage however, the learned counsel could not give any details as to whether any witnesses have been examined in the said case. The contention of the learned counsel for the petitioner is that the accused person have been languishing in jail for the last 20 months and the case being one under Section 8 of the POCSO Act even assuming but not admitting that the accused may be convicted, the punishment entailed would be 3 years or 5 years at the most and as such, on this ground alone, the accused person is entitled to be enlarged on bail. The fact that the accused person is also the sole bread earner of the family having four school going children and a wife who is dependent on him

and his livelihood being affected on account of his being in custody, therefore, it is prayed that this Court may be pleased to enlarge the said accused person on bail with any conditions as deemed fit and proper to be imposed by this Court.

6. Mr. A.H. Kharwanlang, learned Addl. Sr. GA appearing for the State respondent in opposition to the submission and contention made by the petitioner has submitted that a perusal of this petition with the annexures annexed herein, particularly the chargesheet and the statement of the survivor, what is evident is that the survivor had clearly indicated in her statement before the Magistrate under Section 164 Cr.P.C that the accused person had molested her when he came to their residence and on being offered tea, the survivor while preparing the same was accosted by the accused person who had sexually molested her. However, on the survivor raising a hue and cry some people came and assaulted the accused and thereafter the FIR was filed and the accused person was arrested in connection thereof.

7. What has been stressed is on the fact that the survivor having been given a very lucid explanation of the event as it happened, therefore a prima facie case has been well made out against the accused person and even in course of trial such piece of evidence cannot be shaken which would eventually lead to his conviction. Therefore, if the accused is enlarged on bail there are further possibilities that he may abscond. It is on this ground that the prayer for bail is hereby objected to.

8. Upon hearing the learned counsels for the parties, this Court has perused the petition and also the annexures annexed thereto. What is found relevant is that the I/O has mostly relied on the statement of the survivor to

come to the conclusion that a prima facie case has been found well established against the accused person. On query made by this Court, none of the parties could furnish any information as to what is the stage of the case before the trial court. However what is to be noted is, in a case under POCSO Act under the provision of Section 35 of the said Act, it is incumbent upon the trial court to complete the trial preferably with 12 months from the date of taking cognizance of the offence. This has not happened in the case under reference. The fact that the case has been delayed and that the accused person is in custody for quite some time, more particularly about 20 months or so, is reason enough for this Court to consider the prayer made in this petition. It goes without saying that whatever has been pointed out by the learned Addl. Sr. GA as regard the statement of the survivor, the same has to be tested in evidence before the trial court.

9. In view of the observation made herein above, this Court is inclined to allow this petition. The accused person is hereby directed to be released on bail on the following conditions:

- i. That he shall not abscond or tamper with the evidence or witnesses;
- ii. That he shall not leave the jurisdiction of the State without prior permission of the trial court;
- iii. That he shall not come in contact with the survivor during pendency of this case before the trial court;
- iv. That he shall bind himself on a personal bond of ₹ 50,000/- (rupees fifty thousand) only with one surety of like amount to

the satisfaction of the trial court;

- v. Violation of any of the conditions stated above would render the bail accordingly to be cancelled on application made.

10. Petition disposed of. No costs.

Judge

Meghalaya
28.12.2023
"Tiprilynti-PS"

