

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 15 of 2024

Date of Decision: 31.05.2024

Shri. Bashanbha Syngkli,
S/o Shri. Bisting Lyngdoh
R/o Patharkhmah

::::: **Petitioner**

-Vs-

1. The State of Meghalaya
Represented through Secretary
And Commissioner, Home Police
Department, Government of
Meghalaya.
2. Superintendent of Police
Shillong, Ri-Bhoi District,
Meghalaya.
3. Smti. Diana Kalweng,
W/o (L) Nobarsingh Thangkhiew
R/o Wahsynon, Jirang,
P.S. Nongpoh, Ri-Bhoi District,
Meghalaya.

::::: **Respondents**

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Ms. S. Nongsiej, Adv.
For the Respondent(s)	:	Mr. R. Gurung, GA. with Mr. J. Thabah, GA. for R 1 & 2. None for R 3.

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

ii) Whether approved for publication
in press:

Yes/No

JUDGMENT AND ORDER (ORAL)

1. Heard Ms. S. Nongsiej, learned counsel for the petitioner, who has submitted that the petitioner is an accused in connection with Special (POCSO) Case No. 145 of 2022 pending before the Court of the learned Special Judge (POCSO), Nongpoh, Ri-Bhoi District.

2. The learned counsel has submitted that affidavit of service as regard the issuance of notice upon the respondent No. 3 has been filed to indicate that the notice has been affectively occasioned, however, the respondent No. 3 has failed to appear before this Court today. Accordingly, on prayer made, this matter shall proceed ex-parte against the respondent No. 3.

3. It is the case of the petitioner/accused that on a complaint filed by the respondent No. 3 vide FIR dated 09.07.2022 with the allegations that the petitioner/accused has committed an act of sexual assault upon the minor daughter, the police has taken cognizance of the said FIR, and has registered the same as Women P.S. Case No. 36 (7) 2022 under Section

5(g)/6 of the POCSO Act, 2012.

4. On investigation launched and the same duly completed, the Investigating Officer has filed the charge sheet finding that a prima facie case is found well established against the three accused persons including the petitioner herein. The learned Trial Court, on consideration of the said charge sheet, has caused registration of a regular case being Special (POCSO) Case No. 145 of 2022 and the case is now pending for examination of prosecution witnesses.

5. It is the further submission of the learned counsel that the petitioner/accused was arrested in connection with the said case on 10.07.2022 and is still in custody till date. Again, it is submitted that the charge sheet was filed on 07.10.2022 and the learned Trial Court has framed charges against the accused persons on 22.05.2023. There are about 11(eleven) prosecution witnesses who are to be examined, however, since the date when the charges have been framed, till date, that is, about a year or so, no witnesses have been examined by the prosecution, if not for anything else, but for the delay caused in the trial, the petitioner/accused is entitled to be enlarged on bail to allow him to defend his case, further submits the learned counsel. It is prayed that this application may be

allowed and the petitioner/accused may be enlarged on bail with any conditions to be imposed by this Court.

6. Mr. R. Gurung, learned GA appearing for the State respondent Nos. 1 & 2 has opposed the prayer made by the learned counsel for the petitioner, but has however left it to the discretion of this Court to pass necessary orders in this regard.

7. This Court, on consideration of the submission made, and on perusal of this application, would agree that the alleged offence are serious in nature and the petitioner/accused in normal circumstances, would not have been allowed to be enlarged on bail, considering the fact that the survivor is a minor. However, on perusal of Section 35 of the POCSO Act, what can be understood is that when the court has taken cognizance of the matter and the trial has started, it would be incumbent upon the Trial Court to complete the proceedings as far as possible within a period of one year from the date of taking cognizance of the offence. However, in the peculiar circumstances involved in the case, when even after a period of more than one year since the date when the charges were framed, no witnesses have been examined, thereby, a delay in the proceedings has occurred in the opinion of this Court. On this ground alone, this Court is inclined to allow

the prayer made by the petitioner/accused.

8. The petitioner/accused Shri. Bashanbha Syngkli is hereby directed to be released on bail on the following conditions that:

- i) He shall not abscond or tamper with the evidence and witnesses;
- ii) He shall not leave the jurisdiction of the State of Meghalaya without due prior permission from the Investigating Officer or the court concerned;
- iii) He shall appear before the court as and when required;
- iv) He shall personally bind himself on a bond of ₹ 30,000/- (Rupees thirty thousand) only with one surety of like amount to the satisfaction of the Trial Court;
- v) He shall have no contact whatsoever with the survivor as far as the residence is concerned. It would be proper for the petitioner/accused to relocate his residence far away from the residence of the survivor for the ensuing part of these proceedings before the Trial Court.

9. Needless to say, any breach of the conditions stated

hereinabove, would allow the prosecution to file an application for cancellation of the bail before the Trial Court.

10. In view of the above-noted directions, bail application stands disposed of. No costs.

Judge

Meghalaya
31.05.2024
"D. Nary, PS"