



**Serial No. 06**  
**Regular List**

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

**BA. No. 33 of 2024**

**Date of Decision 30.10.2024**

Smti. Injora Sten  
M/o Shri. Pynshemlad Sten  
R/o H/No. 22, Klew Them  
Village, Ri-Bhoi District,  
Meghalaya.

**..... Applicant**

**-Vs-**

1. State of Meghalaya  
Through the Superintendent of Police,  
Ri-Bhoi District,  
Meghalaya.
2. Smti. Ibadahun Kharsati,  
(Complainant)  
W/o Shri. Robis Sten,  
R/o Klew Them Village,  
793103,  
Ri-Bhoi District,  
Meghalaya.

**..... Respondents**

**Coram:**

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

**Appearance:**

For the Petitioner/Appellant(s) : Mr. L. Syiem, Adv.

For the Respondent(s) : Mr. K. Khan, PP. with



Mr. S. Sengupta, Addl. PP. for R 1.  
Ms. S. Nongsiej, Legal Aid Counsel  
For R 2.

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

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### **JUDGMENT (ORAL)**

1. Heard Mr. L. Syiem, learned counsel for the applicant, who has submitted that this application has been filed by the mother of the accused person, namely, Shri. Pynshemlad Sten under Section 483 of the Bharatiya Nagarik Suraksha (BNSS), 2023 read with Section 31 of the POCSO Act, 2012 with a prayer for grant of bail on behalf of the said accused person in connection with Special POCSO Case No. 11 of 2024 under Section 376 (2)(j) IPC, 354B read with Section 3(a)/5(j) (ii)/6 of the POCSO Act pending before the Court of the learned Special Judge (POCSO), Ri-Bhoi District, Nongpoh.

2. On the facts of the case, the learned counsel submits that an FIR dated 23.01.2024 was lodged by the mother of Miss. X (survivor) who was about 16 years old at the relevant point of time. The complaint being made therein is that the accused person in question had committed an act of sexual penetrative assault on the person of the



survivor, as a result of which, the survivor became pregnant and gave birth to a female child in the month of April, 2024.

3. The main contention of the learned counsel for the prayer made in this application is that, not denying the fact that the act of sexual intercourse between the accused person and the survivor having taken place, however, the fact that the survivor had never in her statement before the police under Section 161 or before the Magistrate under Section 164 Cr.P.C as well as in her deposition before the court as PW. 1, wherein she has admitted to having consensual sex with the accused person, who she claimed to be her boyfriend, and was pregnant as a result thereof. \_

4. This being the case, the learned counsel has submitted that the accused person being in custody for almost 8(eight) months, and that the investigation having been completed and the trial is at the stage of recording of evidence, it would be futile for any further incarceration of the said accused person or rather, it would be quite in keeping with the settled principle of bail jurisprudence as well as his right under Article 21 of the Constitution of India to be given the liberty to contest



his case before the court concerned in an atmosphere which is suitable and congenial to him.

5. It is the further submission of the learned counsel that the accused person has no criminal antecedent, and, if enlarged on bail, he is prepared to abide by any conditions that this Court may deem fit and proper to impose. In this connection, the learned counsel has referred to the case of *John Franklin Shylla v. State of Meghalaya & Anr reported in 2023 SCC OnLine Megh 303* at para 13, wherein this Court has observed that the victim therein, although a minor, however, being about 16 years of age or so at the relevant point of time, the physical and mental development of an adolescent of that age group, such person is capable of making a conscious decision as regard to her well-being, vis-à-vis, the act of sexual intercourse. The survivor being about 16 years of age or so at the relevant point of time, therefore, having admitted to the act being consensual, the accused person not being at fault entirely, at this stage, he may be allowed to go on bail.

6. Per contra, Mr. K. Khan, learned PP appearing for the State respondent No. 1, while opposing the prayer made in this application, has submitted that the accused person and the survivor had had sexual



intercourse, the survivor being a minor, therefore, consent of such act, would not stand the scrutiny of law in this regard, and as such, the accused person is liable to be punished under the relevant provision of law.

7. The learned PP has also stressed on the fact that the act of sexual assault has affected the survivor, inasmuch as, her standing in society and the course of her life has been drastically affected by such an act perpetrated upon her, on top of the fact that she is under the bearer of a baby girl, whose paternity has been refused to be acknowledged by the accused person. Under such circumstances, it would be prudent to let the accused remain in custody till conclusion of the trial.

8. Ms. S. Nongsiej, learned Legal Aid Counsel appearing on behalf of the respondent No. 2/complainant, who is also the mother of the survivor has submitted that the prayer made in this application is vehemently opposed on the ground that apart from the fact that the accused person has committed a serious offence, which has outraged the modesty of a young girl, even when she had given birth to a child out of such force union, the denial of the accused person to own up and



take responsibility as the father of the child has also greatly affected the survivor, and there is apprehension that, if enlarged on bail, he will threaten the survivor. Under such circumstances, this application may not be allowed, submits the learned Legal Aid Counsel.

9. This Court has taken into account the facts and circumstances of the case, and is made to understand that the accused person in the first place has not made any denial of the alleged sexual act between him and the survivor as has been indicated in the FIR. The only defence that the accused person has, is that the act was consensual since the survivor is his girlfriend, and there was no force or coercion from his part when the said act was constituted.

10. As to the admission of being the father of the said child, the accused person has not completely denied such fact, but has stated that in the condition that he is in, that is, being in custody, he is not able to interact his family members about the matter, and perhaps, if enlarged on bail, his family member may approach the survivor and her family member to discuss about the issue.

11. This Court at this stage, is only to consider the aspect of whether the bail can be granted or not. Under the prevailing



circumstances, the investigation having been completed, and evidence is underway with the survivor herself having deposed as PW. 1, therefore, there is no apprehension of evidence being tampered or even of the survivor as the main witness being intimidated as that would serve no purpose as far as the proceedings before the Trial Court is concerned.

12. Focusing mostly on the issue of whether bail can be granted or not, this Court, at this juncture, finds it unnecessary to let the accused person linger in custody, but rather as has been submitted, it would be in furtherance of his right to allow the accused person to be enlarged on bail, so that he can defend his case properly.

13. Be that as it may, this Court would refrain from making any observation as far as the issue of paternity of the child is concerned, though the learned Legal Aid Counsel has pointedly submitted that the DNA test having been conducted, the paternity of the accused person as the father of the child is confirmed.

14. Since prima facie, it appears that no force or physical assault has been employed at the time when the alleged act was committed by the accused person, it would be left to the wisdom of the Trial Court on



appreciation of the complete body of evidence to come to a conclusion as to his guilt or innocence.

15. At this point of time, this Court is inclined to allow the accused person to be enlarged on bail on imposing certain conditions, violation of which will allow the prosecution to make a prayer for cancellation of the bail. Accordingly, this application is allowed.

16. The accused person, Shri. Pynshemlad Sten is directed to be released on bail, if not wanted in any other case on the following conditions that:

- i) He shall not abscond or tamper with the evidence or witnesses;
- ii) He shall appear before the Trial Court as and when required;
- iii) He shall not leave the jurisdiction of the State of Meghalaya without prior permission of the Trial Court;





- iv) He shall have no physical contact or even verbal contact with the survivor during the pendency of the trial; and
- v) He shall bind himself on a personal bond of ₹ 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the Trial Court.

17. In view of the above noted observations, this application is accordingly disposed of. No costs.

**Judge**