



**Serial No. 02**  
**Regular List**

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

BA No. 53 of 2024

Date of Decision: 30.10.2024

Shri. Withelson Marak  
Smti. Saleni S. Marak  
Resident of Gohaimara Village,  
South West Khasi Hills District  
Meghalaya

-versus-

.....Petitioner

1. State of Meghalaya, represented by the  
Learned Special Public Prosecutor
2. Smti. Lesitha S. Marak  
Wife of Shri. Oken K. Marak  
Resident of Gahanimara,  
South West Khasi Hills District  
Meghalaya.

.....Respondents

**Coram:**

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

**Appearance:**

For the Petitioner/Appellant(s)	: Mr. P. Nongbri, Adv. Mr. M.L. Nongpiur, Adv.
For the Respondent(s)	: Mr. K. Khan, P.P with Mr. S. Sengupta, Addl. P.P Mr. R. Gurung, GA

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



**ORDER (ORAL)**

1. This is an application under Section 483 of the BNSS, 2023 with a prayer for grant of bail on behalf of the accused person/petitioner Shri. Withelson Marak who is in judicial custody in connection with Special (POCSO) Case No. 45 of 2023 arising out of Mawshynrut P.S. Case No. 22(08) of 2023 under Section 5(k)(m)(n)/6 of the POCSO Act, 2012.

2. The brief facts of the case is that an FIR dated 26.08.2023 was lodged by the respondent No. 2 wherein it was alleged that his minor daughter aged about 12 years or so had confessed that the petitioner had committed sexual assault on her person. The FIR was registered as Mawshynrut P.S. Case No. 22 (08) of 2023 under Section 5(k)(m)(n)/6 of the POCSO Act, 2012 and investigation was launched. In the meantime, the petitioner was arrested on 27.08.2023 and is in custody till date.

3. The Investigating Officer (IO) on completion of the formalities of the investigation of the case had filed the chargesheet dated 20.10.2023 and has come to a finding that a well-established prima facie case under Section 5(l)/6 POCSO Act read with Section 506 IPC is made out against the accused/petitioner and he is accordingly directed to stand trial.

4. The learned Special Court (POCSO), West Khasi Hills District, Nongstoin taking cognizance of the case being registered as Special (POCSO) Case No. 45 of 2023 had framed charges against the accused/petitioner under the relevant provision of law and apparently



on the accused/petitioner denying such charges, the trial continued for recording of evidence of the prosecution witnesses. Till date, 3(three) witnesses including the survivor out of the total 10(ten) witnesses have been examined in court and discharged.

5. Mr. P. Nongbri, learned counsel for the accused/petitioner has submitted that the petitioner is before this Court with a prayer for grant of bail on two grounds, firstly that he has been in custody for a very long time, in fact, about 14 months or so and secondly, that the possibility of the case being completed in the near future is not possible considering the fact that only 3 witnesses of the 10 witnesses have been examined so far. The last witness was examined and discharged on 25.04.2024 and since then no further witnesses have been examined till date.

6. It is the further submission of the learned counsel that the provision of Section 35 of the POCSO Act has not been complied with inasmuch as the said provision would stipulate that the trial before the Special Court in cases under the POCSO Act should be completed within a period of 1(one) year which is not the case herein. The said provision placed in juxtaposition with the entitlement of bail, the accused/petitioner is therefore entitled to be granted bail. The case of Shri. Edwos Syngkli v. State of Meghalaya & Anr. wherein this Court vide order dated 06.11.2023 in BA No. 36 of 2023 on appreciation and application of Section 35 of the POCSO Act to the case of the petitioner therein, had granted bail to the accused person on this ground alone.

7. Even as regard the unduly long period of incarceration of the accused/petitioner, the learned counsel would submit that his personal liberty as guaranteed under Article 21 of the Constitution of India has



been deprived. Such long incarceration is also frowned upon by the Hon'ble Supreme Court wherein in the case of Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v. State of Uttar Pradesh, 2024 SCC Online SC 1755 had granted bail to the appellant therein by observing at para 33 as follows:

“33. Thus, having regard to the discussions made above, we are of the considered view that continued incarceration of the appellant cannot be justified. We are, therefore, inclined to grant bail to the appellant.”

8. The learned counsel has therefore submitted that the petitioner may be granted bail with any conditions that this Court may deemed it fit to impose and the same will be duly complied with.

9. Per contra, Mr. K. Khan, learned P.P has submitted that the facts and circumstances of the case including the testimony of the survivor wherein in the many statements made before the IO and the Magistrate, she had clearly narrated the manner in which the accused/petitioner had perpetrated the sexual assault, more so, in her deposition before the court as a prosecution witness, such vivid narration of how the accused petitioner had sexually assaulted her cannot but convinced this Court of the gravity and nature of the offence committed by the accused/petitioner and on such prima facie evidence, he is not entitled to the benefit of being enlarged on bail at this point of time. This petition is therefore liable to be dismissed, submits the learned P.P.

10. This Court on consideration of the submission and contention made by the parties herein, facts apart, it is noted that the accused/petitioner has not categorically denied that the alleged act of sexual assault has not taken place. Instead, the plea for grant of bail has been made only on the two grounds aforementioned.



11. It may be pointed out that at this stage of the trial, though there is no bar for an accused to approach the court with a prayer for grant of bail, however it is to be mentioned that the petitioner can only plead his case on merits.

12. This Court on the insistence of the learned P.P has also perused the deposition of the survivor, copy of which is annexed in this petition and without detailing what has been recorded by the trial court, it is seen that the survivor had depicted the incident(s) of how the accused/petitioner had violated her to the minutest details which will leave no room for this Court to conclude that the manner in which the accused/petitioner had committed the offence of sexual assault upon a young minor girl of twelve years and that too, one who has moderate mental retardation with 75% disability as mentioned in her IQ assessment report, such fact being duly noted by the learned Special Judge, POCSO who had recorded her deposition, should fall under the bracket of a very heinous crime.

13. It is also well settled that bail is a discretion to be exercised by the court taking into account the facts and circumstances of the particular case, having due regard to the principles and factors to be considered while granting or refusing bail, such as the nature and seriousness of the offence. Notwithstanding the length of custodial detention of the accused/petitioner, at this point of time this Court is not inclined to allow the prayer made in this petition. This petition is accordingly found to be devoid of merits the same is hereby dismissed.

14. Petitioner disposed of. No costs.

**Judge**