



Serial No. 02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 76 of 2024

Date of Decision: 28.11.2024

Smti. Soloni Pathaw
W/o Shri. Akoï Dohtdong
R/o Umran Niangbyrnai
Ri-Bhoi District, Meghalaya.

::::: **Petitioner**

-AND-

Shri. Shandiwell Pathaw
S/o Shri. Akoï Dohtdong
R/o Umran Niangbyrnai
Ri-Bhoi District, Meghalaya.

::::: **Accused Person**

- Vs-

1. The State of Meghalaya Represented by
its Secretary Home (Police) Department.
Government of Meghalaya.
2. Officer-in-Charge, Women P.S. Nongpoh,
Ri-Bhoi District, Meghalaya.
3. Shri. Banpynskhem Kharnaïor
H/o Smti. June Mary Jyrwa
R/o Umsning Proper B
Ri-Bhoi District, Meghalaya.

::::: **Respondents**

**Coram:**

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. R. Gurung, Adv.

For the Respondent(s) : Mr. S. Sengupta, Addl. PP.
Mr. H. Kharmih, Addl. PP. for R 1 & 2.
Ms. S. Nongsiej, Legal Aid Counsel
For R 3.

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

JUDGMENT AND ORDER (ORAL)

1. This is an application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 for grant of bail on behalf of the accused person, Shri. Shandiwell Pathaw represented by his mother, the petitioner herein.

2. Heard Mr. R. Gurung, learned counsel for the petitioner, who has submitted that an FIR dated 30.01.2024 was lodged by the respondent No. 3, alleging that his minor daughter aged about 13 years old is in a relationship with the accused person in question, and on 29.01.2024, the duo was caught by the mother of the survivor.



3. The incident having taken place at the residence of the survivor, the FIR was accordingly acknowledged and Women P.S. Case No. 04 (01) 2024 under Section 3(a)/4/5(j)(II)/6 POCSO Act, 2012 read with Section 376(2)(j) IPC, 1860 was registered. The matter was duly investigated upon and the Investigating Officer (I/O), after completion of the investigation, has filed the final report and charge sheet on 27.03.2024 finding a prima facie case well established against the accused person and that he is to be tried before the competent court of jurisdiction.

4. The matter is now pending before the Court of the learned Special Judge (POCSO), Ri-Bhoi District, Nongpoh, who after consideration of the charges made, has framed charges against the accused under the relevant provision of the IPC and the POCSO Act respectively. The stage of the case at present is for recording of evidence of the prosecution witness. It may be noted that the evidence of the survivor has since been recorded as PW. 1 and she was discharged therefrom.

5. The learned counsel has further submitted that the accused person being a young person of 19 years old is not aware of the



implication of the law in this regard and had entered into a relationship with the survivor voluntarily. The act of sexual intercourse in course of their relationship is also not denied and the same is also with the consent of the survivor, submits the learned counsel.

6. The learned counsel also submits that the ground for grant of bail that the petitioner has relied upon at this point of time is firstly, that the accused person has no criminal antecedent, and would pursue the matter in course of trial to present his defence. Secondly, that the accused having been in custody for more than 10(ten) months and since there is a considerable delay in the trial where, out of six prosecution witnesses only one witness has been examined so far, under such circumstances, it is prayed that this Court may be pleased to enlarge the accused person on bail on the conditions fit to be imposed by this Court.

7. In support of his contention, the learned counsel has also referred to the case of ***Smti. Masbon Syiem v. The State of Meghalaya & Anr***, wherein vide order dated 22.05.2024 passed in BA. No. 16 of 2024, this Court, at para 14 of the same, had referred to the case of ***Sanjay Chandra v. Central Bureau of Investigation reported in (2012) 1 SCC 40*** at para 26, wherein the Hon'ble Supreme Court has observed



that:

“26. When the under-trial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated... This Court, in the case of *State of Kerala v. Raneef* (2011) 1 SCC 784, has stated:-

"15. In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the respondent has already spent 66 days in custody (as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dicken's novel *A Tale of Two Cities*, who forgot his profession and even his name in the Bastille."

8. Ms. S. Nongsiej, learned Legal Aid Counsel appearing on behalf of the respondent No. 3 has submitted that the apprehension of the respondent No. 3 is that his minor daughter is a 13 years old girl and is pursuing her studies, and, if the accused is enlarged on bail, it will affect her personality, psychologically and otherwise. It is also the submission of the learned Legal Aid Counsel that the place of residence



of the survivor and the accused person is not very far, and as such, there is a possibility of the two meeting together to continue with the relationship, which would be detrimental to the well-being of the survivor. Hence, the objection raised herein.

9. Mr. S. Sengupta, learned Addl. PP appearing on behalf of the State respondent Nos. 1 & 2 has submitted that the prosecution in this case has only a one point argument, that is, considering the fact that there has been sexual intercourse between the accused person and the survivor, even, if it is with the consent of the survivor, the fact that she is a minor of 13 years old, such consent would have no validity in the eyes of law, and as such, at this stage, it may not be proper for the accused person to be enlarged on bail.

10. This Court has given due consideration to the submission made, and has also perused the petition and the annexures therein. As has been pointed out above, from the submission of the parties, the facts and circumstances of the case may not be repeated, suffice it to say that at present, the accused person has been in custody for the last 10(ten) months or so. It is also a fact that the case is proceeding with the evidence of the witnesses being recorded, the evidence of the PW. 1 i.e.



the survivor having been recorded on 09.10.2024, we are now in the month of November, 2024, as such, there is no question of delay as far as the proceeding is concerned. However, on an overall analysis of the facts and circumstances of this case, the charge sheet having been filed which means that investigation is complete. The fact that the survivor has also given her statement before the court as PW. 1, there is no possibility of the accused tampering with the evidence or witnesses at this point of time. It is also to be noted that the question of bail being granted or not, if granted, is only to ensure that the accused person appears in court or will not abscond. However, if sufficient surety is ensured, conditions imposed are adhered to, more often than not, the court would consider the issue of grant of bail favourably.

11. In the case of Sanjay Chandra (supra), the Hon'ble Supreme Court at para 21 has observed that:

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be



innocent until duly tried and duly found guilty.”

12. As to the apprehension of the respondent No. 3, it would be incumbent upon the accused person, if enlarged on bail to comply with the conditions to be imposed. Accordingly, at this point of time, this Court is inclined to allow this petition.

13. The accused person, Shri. Shandiwel Pathaw 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 of the court concerned;
- iii) He shall appear before the Trial Court as and when required;
- iv) 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; and
- v) He shall have no contact whatsoever with the survivor till the disposal of the case before the Trial Court.



14. Needless to say, failing to comply with any of the conditions stated hereinabove, would allow the prosecution to approach the Trial Court for cancellation of the bail.

15. In view of the above, this petition is accordingly disposed of.

No costs.

Judge