

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

AB. No. 9 of 2021

Date of Decision: 24.09.2021

Md. Saminur Sheikh

Vs.

State of Meghalaya & 2 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. A. H. Hazarika, Adv.

For the Respondent(s) : Mr. K.P. Bhattacharjee, GA.

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

1. Matter is taken up via video conferencing.

2. This is an application u/s 438 Cr.PC preferred by the applicant herein with a prayer to grant pre-arrest bail in connection with Mendipathar Women PS Case No. 02/2021 u/s 366 A/343/376(2)(i)(n) IPC r/w Section 3 (a)/4 POCSO Act.

3. From the application in hand, it is seen that the applicant has averred that he used to help his father who is a vegetable vendor operating in Bajengdoba, Mendipathar, Resubelpara and some other places in North Garo

Hills where, in the course of his father's business a friendship developed between his father and one Shri Ponindro Sangma who is also a petty businessman and in this way acquaintance was established between the two families.

4. The applicant then learned that the said Shri Ponindro Sangma had lodged an FIR at the Bajengdoba PS on 02.01.2021 alleging that his daughter was missing from home without any information and for the police to take necessary action in this regard. Accordingly, the police registered a criminal case being Mendipathar Women PS Case No. 02/2021 u/s 366 A/343/376(2)(i)(n) IPC r/w Section 3 (a)/4 POCSO Act.

5. It is also stated that the alleged missing girl had come voluntarily to the applicant father's house on 01.01.2021 and when asked whether she had informed her family she replied in the negative. The father of the applicant then tried to call the family members of the girl but could not contact them and as such, the girl stayed the night with the family.

6. When the family members of the girl came to pick up the girl from the applicant's house, the father of the applicant and the father of the girl executed a written agreement to the effect that the girl's family has received their daughter back in good health and they have no grievance against the applicant's family.

7. However, since the applicant is aware of the FIR filed, he is therefore apprehensive that he may be arrested in connection with the said Mendipathar Women PS Case No. 02/2021 and has accordingly approached this Court with this instant application seeking pre-arrest bail.

8. Heard Mr. A. H. Hazarika, learned counsel for the Petitioner who has submitted that as far as the knowledge of the applicant is concerned, the complainant had filed an FIR only with regard to the fact that his daughter was missing and could not be traced, however, since she was eventually

located with no physical or mental injury therefore, the matter ought to have been disposed of at the relevant time. However, the applicant has learned that the police has added some other sections of law including those under the POCSO Act and the police were also on the lookout for him.

9. It is therefore prayed that there being a reasonable apprehension of being arrested in connection with non-bailable section of law, the applicant prays for pre-arrest bail to be granted to him with any conditions to be imposed by this Court.

10. Also heard Mr. K.P Bhattacharjee learned GA who has submitted that the case diary has been called for by this Court has been duly produced. It is also further submitted that the Investigating Officer has examined the victim girl and her statement u/s 164 Cr.PC was also recorded by the Judicial Magistrate First Class and is part of the case diary. What appears on record is that the victim girl who is a minor was abducted by the applicant herein and she was forced to perform a sham marriage ceremony after which the applicant had violated her chastity. Thereafter, the applicant had taken her to his father's house where she was re-united with her family.

11. This being the case, the learned GA has submitted that pre-arrest bail may not be allowed at this juncture and instead the Investigating Officer may be allowed to question the applicant in connection with this case.

12. Upon hearing the learned counsels of the parties and on perusal of the case diary duly produced before this Court, what could be understood from the factual presentation in the case diary is that the young girl who is a minor was apparently abducted and forced to marry the applicant and was also sexually assaulted which is clearly a violation of the relevant provision of law and amounts to a crime against women and children. This has led this Court to believe that there is a prima facie case against the applicant herein.

13. It is well settled that though the power to grant pre-arrest bail is a

discretionary power to be exercised by the Courts, however, the power cannot be exercised whimsically or without any basis outside the relevant materials on record. It is also well settled that while consideration for grant of pre-arrest bail is concerned, the nature and gravity of the accusation and the exact role of the accused must be completely comprehended before any appropriate order is passed.

14. In view of the observations of this Court and the materials on record particularly the case diary, this Court is not inclined to allow this petition at this juncture.

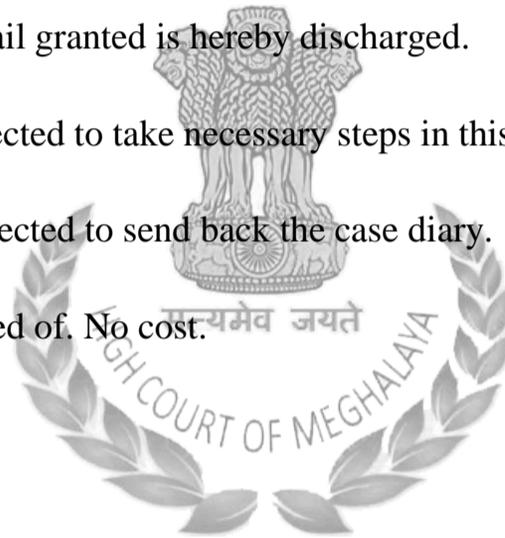
15. Accordingly, this petition is hereby dismissed as devoid of merits.

16. The interim bail granted is hereby discharged.

17. The I.O is directed to take necessary steps in this regard.

18. Registry is directed to send back the case diary.

19. Matter disposed of. No cost.



Judge

Meghalaya

24.09.2021

"N. Swer, Stenographer"