

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

AB. No. 12 of 2021

Date of Decision: 21.10.2021

Shri. Akramuz Zaman 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. B. Bhattacharjee, AAG. with
Ms. R. Colney, GA.
Ms. Z.E. Nongkynrih, 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. This is an application u/s 438 Cr.P.C preferred by the applicant herein with a prayer to grant pre-arrest bail in connection with Tura Women P.S Case No. 46(06)2021 under Section 3 (a)/4 of the POCSO Act.

2. The applicant in this application has referred to the FIR dated 14.06.2021 wherein the Informant therein has made an allegation that the applicant has sexually assaulted one minor girl on 12.06.2021 at about 2:30 PM at Matramchigre village, West Garo Hills District.

3. The version of the applicant is that he is in love with the alleged victim girl for a few months and this relationship was accepted by the parents of the said victim girl and thereafter, since the month of June 2021, they had stayed together as husband and wife.

4. The applicant has also stated that the victim girl is not a minor as

alleged, but as per the birth certificate, her date of birth is 07.01.2002. This is also reflected in her school certificate, Adhaar card, Pan card and other vital documents which shows that as on the date of filing of the said FIR, she is more than 19 years of age and is therefore an adult and there is no bar for her to enter into a marital relationship on her own accord.

5. However since the marriage tie between the applicant and the alleged victim girl was not agreeable by one of her relative and a few local Non-governmental Organizations (NGOs), the Headmaster of the local school in which the victim girl was studying was forced to issue a school certificate to show the date of birth of the victim girl as 07.01.2005.

6. In view of the fact that the police had come to his residence in search of him, he is therefore apprehensive of being arrested in connection with the said Tura Women Police Case No. 46(06) 2021. Hence this application.

7. Mr. A.H. Hazarika, learned counsel appearing on behalf of the applicant has submitted that the FIR was filed by a third person who has forcibly taken the signature of the father of the alleged victim when in fact, the father and family of the victim has no objection to the relationship between the victim and the accused/applicant herein and as such, the said complaint is not correct.

8. Another contention raised by Mr. Hazarika is that the documents which are in the possession of the victim girl Viz; the birth certificate, the Adhaar card etc. all recorded the date of birth of the said victim girl as 07.01.2002, however the one which was in the possession of the I/O, particularly the Transfer Certificate from the School which shows the date of birth of the victim girl as 07.01.2005 is not the correct one since it was procured only by forcing the Headmaster to issue the same.

9. Again, learned counsel for the applicant has submitted that the said victim girl is living with the accused/applicant and is now pregnant for about

three months and as stated earlier, the family of the girl are not objecting to the said union instead only some NGOs are against inter-caste marriage and are objecting to the same.

10. It is finally submitted that the applicant may be allowed to go on anticipatory bail with any conditions and that he will fully co-operate with the I/O if the liberty prayed for is granted.

11. Mr. B. Bhattacharjee, learned AAG seeking to contradict the submission and contention of the learned counsel for the applicant has submitted that this matter is to be considered from many aspects, some of which are factual in nature, though the same are yet to be proved in due course. However, what has to be prima facie establish is whether the victim girl is a minor or major at the time of the incident.

12. The learned AAG has also submitted that the documents annexed by the applicant in this instant application particularly those relating to the age of the victim girl has to be carefully scrutinised in the factual and circumstantial context, inasmuch as, such documents should not be questionable.

13. In this regard, the learned AAG has submitted that the documents annexed by the applicant in his application has to be such that they can be taken as authentic since preliminary evidence collected by the I/O shows that there are also some documents pertaining to the age to the victim girl which are contradictory to those relied upon by the applicant. Example is cited to the Adhaar card submitted by the applicant which shows that it was applied after the FIR was filed. There are also two Adhaar cards of the victim girl, the date of birth on the one produced by the applicant indicate the same as 07.01.2002, while the one seized by the I/O again in the name of the victim girl shows the date of birth as 07.01.2005.

14. Yet again, reference is made to the affidavit sworn in by the victim girl on 24.06.2021, wherein she had claimed to have converted to Islam and that

she is 19 years of age based on the certificate of some doctor, but nowhere was any reliance or reference made to the documents such as Adhaar card or the birth certificate.

15. Another document seized by the I/O is the Marriage Certificate of the accused/applicant and the victim girl which was purportedly issued by the Kazi Moulana Md. Omar Ali on 25.06.2021 when in fact, the said Md. Omar Ali was in jail in connection with some other case and as such, the said document is also suspect.

16. In the light of the submission made, the learned AAG has reiterated that there is a bigger conspiracy here involving the accused/applicant and therefore this application is liable to be rejected at the threshold.

17. Having heard the learned counsels for the parties and on perusal of the case dairy duly produced before this Court, what is apparent is that apart from the facts related above, there are two reports involved with the applicant herein, the first, dated 14.06.2021, is a complaint of him having sexually assaulted the victim girl, the daughter of the Complainant and the second is one dated 15.06.2021 which is a report again filed by the father of the victim girl which is a missing report informing that on the night of the 14th June, 2021, the said victim girl was found missing. Investigation as well as admission of the applicant herein suggests that the said victim girl is nor living with the applicant, but could not be traced by the I/O till date.

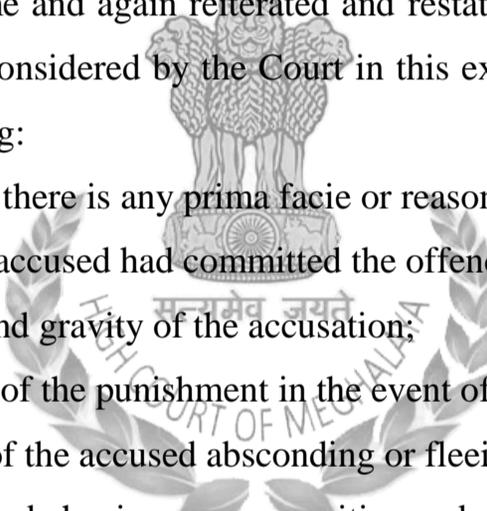
18. Another fact that surfaced from these proceedings is that the applicant has been absconding since the time the first FIR was filed and he could not be found at his place of residence, prompting the I/O to report that he has been absconding till date.

19. As to the contention of the learned AAG that the documents produced by the applicant as regard the age proof of the victim girl are procured fraudulently and that the one procured by the I/O, that is, the Transfer

Certificate from the School of the victim girl is the one with the correct date of birth, is indeed a matter of evidence at the time of the trial. However, this Court cannot lose sight of the fact that such piece of information even at this point of time would cast doubt on the veracity of the actual age of the victim girl.

20. Yet another aspect of the matter is the fact that the victim girl in her statement before the police has stated that she had been sexually assaulted by the applicant/accused about three months ago.

21. As to the basic principles applicable to cases of grant or refusal of pre-arrest or anticipatory bail, the Apex Court and other High Courts in a catena of judgments has time and again reiterated and restated the fact that certain factors ought to be considered by the Court in this exercise, some of which includes the following:

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- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
 - (ii) nature and gravity of the accusation;
 - (iii) severity of the punishment in the event of conviction;
 - (iv) danger of the accused absconding or fleeing, if released on bail;
 - (v) character, behavior, means, position and standing of the accused;
 - (vi) likelihood of the offence being repeated;
 - (vii) reasonable apprehension of the witnesses being influenced;
- and
- (viii) danger, of course, of justice being thwarted by grant of bail.

22. In a recent case of *Sanatan Pandey v. State of Uttar Pradesh and Anr*, the Hon'ble Supreme Court in Special Leave Petition (Criminal) No. 7358 of 2021, vide Order dated 07.10.2021 has opined that *"The Court shall not come to the rescue or help the accused who is not cooperating the investigating agency and absconding..."*

23. It is to be noted that vide order dated 24.09.2021, this Court has granted interim bail to the applicant provided he co-operate with the I/O, but from the records, there is no indication that the applicant has appeared before the I/O, which can be presumed that he is still absconding.

24. In view of the above, this Court has no option but to reject this instant application under the facts and circumstances of the case and the same is found not tenable at this juncture.

25. The interim bail granted is hereby discharged.

26. This matter is hereby disposed of accordingly. No cost.

27. Registry is directed to return the case dairy.

Judge

Meghalaya
21.10.2021
"D. Nary, PS"

