

**Serial No. 03**  
**Regular List**

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

BA. No. 8 of 2021

Date of Decision: 20.09.2021

Shri. Benkelbin Nongrum Vs. State of Meghalaya

**Coram:**

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

**Appearance:**

For the Petitioner/Appellant(s) : Mr. K. Ch. Gautam, Adv.  
For the Respondent(s) : Mr. S. Sengupta, Addl. Sr. GA. with  
Ms. I. Lyngwa, GA.  
Mr. H. Abraham, GA.

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

1. Matter taken up via video conferencing.
2. This is an application u/s 439 Cr.P.C r/w Section 31 of the POCSO Act for grant of bail to the accused person Shri Wanborlang Nongrum. This application has been preferred by the applicant herein who is the brother of the said accused person.
3. The applicant has stated that an FIR dated 02.01.2021 was lodged by the complainant Smti. Wandamon Sari alleging that the accused person has sexually assaulted her minor daughter on 01.01.2021 at around 7:00 PM at Mawrykneng Parish. On the strength of the said FIR, a case being numbered as Mawrykneng P.S Case No. 01(01)2021 u/s 5(1)/6 POCSO Act was registered and the accused person was arrested on 02.01.2021 and is still in judicial custody till date.
4. It is also stated that the investigation has been completed and the I/O has accordingly filed the charge sheet on 29.03.2021 and has come to the

conclusion that during the course of investigation, a prima facie case u/s 5(1)/6 POCSO Act is found well established against the accused person and he is sent to stand trial before the court.

5. Heard Mr. K.Ch. Gautam, learned counsel for the applicant who has submitted that the main thrust of the argument on behalf of the accused is that he was denied the opportunity to be granted default bail as the records would show that the accused was arrested on 02.01.2021 and was in judicial custody since then. However, the I/O who by then has completed the investigation has prepared the charge sheet, but the same was placed before the Court only on the 09.04.2021 which is beyond the mandatory period of 90(ninety) days. However, on the 09.04.2021 though there was no prayer for remand, the accused was remanded to further custody.

6. Mr. Gautam has also cited the case of ***M. Ravindran v. Intelligence Officer, Directorate of Revenue Intelligence: ( 2021) 2 SCC 485*** at paragraph 18.10 and has submitted that at the relevant period, the I/O has failed to file the charge sheet before the Court before the statutory period, however the fact that the accused was entitled to default bail was never informed to the him either by the Court or even by his erstwhile counsel and being ignorant of this fact, the accused was deprived of being given the opportunity to provide bail.

7. Apart from the above, learned counsel for the applicant has also submitted that the alleged incident happened on New Year's day and the accused being only 22 years while the alleged victim is 16 years, the fact that the accused has been in custody for more than 8(eight) months, his continued pre-trial detention would only come in the way of his ability to present his defence freely. It is therefore prayed that if enlarged on bail, strict conditions may be imposed which will be abided by the accused.

8. Mr. S. Sengupta, learned Addl. Sr. G.A. appearing on behalf of the State Respondent has submitted that since the case involving the accused has already been charge sheeted, there being no fresh circumstances, therefore bail at this stage may not be allowed. It is also submitted that this Court may peruse the

case records, and if deemed fit and proper, necessary orders may be passed in this regard.

9. Having heard the learned counsels, what is first required is to answer to the first limb of argument advanced by the learned counsel for the applicant, who has pointed out that the accused ought to have been released on bail on the principle of default bail as is statutorily prescribed in Section 167(1)(2)(a)(i)(ii) Cr.P.C. However, the learned counsel has cast aspersion on the role of the Magistrate and the then counsel of the accused who, according to him has not informed the accused when this indefeasible right has accrued to him, as a result of which he was deprived of exercising such right at the relevant period. The case of **M. Ravindran** (supra) cited by the learned counsel, particularly at paragraph 18.10 was aimed to project this fact. In the said paragraph, the Hon'ble Supreme Court has observed as under:

*“18.10. We agree with the view expressed in Rakesh Kumar Paul that as a cautionary measure, the counsel for the accused as well as the Magistrate ought to inform the accused of the availability of the indefeasible right under Section 167(2) once it accrues to him, without any delay. This is especially where the accused is from an underprivileged section of society and is unlikely to have access to information about his legal rights. Such knowledge sharing by Magistrates will thwart any dilatory tactics by the prosecution and also ensure that the obligations spelled out under Article 21 of the Constitution and the Statement of Objects and Reasons of the CrPC are upheld.”*

10. On being aware of this situation, the accused ought to have raised this issue before the concerned Magistrate, which he has done so as was reflected in the Order dated 13.04.2021 passed by the learned Special Judge(POCSO) Shillong who while considering an application for bail under section 167(2) Cr.P.C, filed by the accused has allowed withdrawal of the same. This clearly implies that the accused has the possibility to correct the anomaly, if any at the first opportunity, but the same was forfeited by his withdrawal of the relevant application. Therefore, the argument of the learned counsel for the accused on this ground is irrelevant at this juncture.

11. What can be considered now is the prayer for regular bail. As stated

above, the accused was arrested on 02.01.2021 and was in judicial custody till date. The Investigation is completed as the charge sheet was filed before the Court in due course. The stage of the case is for supply of copies to the accused.

12. It is well settled that the object of bail is to secure the attendance of the accused at the trial. In this context, it would be but proper to ensure that if the accused is prepared to adhere to the conditions set out by the Court, then bail cannot be refused otherwise. It is indisputable that bail could not be withheld as a punishment.

13. In the case of *Sanjay Chandra v. Central Bureau of Investigation: (2012) 1 SCC 40*, the Hon'ble Supreme Court at paragraphs 21 and 22 has observed as follows:

*"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.*

*22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances."*

14. Under the circumstances, this Court is of the considered opinion that the accused is entitled to bail to allow him to defend his case during trial without the shackles of custodial detention.

15. Accordingly, this application is hereby allowed and the accused is hereby enlarged on bail on the following conditions:

- i) That he shall produce a personal bond of ₹ 30,000/- (Rupees thirty thousand) only along with two solvent sureties of like amount to the satisfaction of the Trial Court;
- ii) That he shall not abscond or threaten the witnesses including the victim;
- iii) That he shall appear in Court as and when required;
- iv) That he shall not leave the jurisdiction of India without due permission of the Court.

16. With the above, this matter is disposed of. No cost.

17. Registry is directed to return the case records.



**Judge**

Meghalaya  
20.09.2021  
"D. Nary, PS"