

**Serial No. 01**  
**Regular List**

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

BA. No. 6 of 2021

Date of Decision: 20.09.2021

Smti. Aibakor Kharbuli

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. 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. The applicant has approached this Court with an application under Section 439 Cr.P.C. r/w section 31 of the POCSO Act with a prayer for grant of bail to the accused person Shri Milon Warjri.
3. Facts as stated in the application is that an FIR was lodged by one Shri Taining Donbor Nongrang to the effect that his sister aged about 16 years who was working as a helper in the house of the accused was molested by the accused since the year 2020.
4. The said FIR was registered at the Mawlai Police Station as Mawlai P.S. Case No. 32(6) 2021 under Section 506 IPC r/w Sections 7/8 POCSO Act, whereupon on coming to learn of the said FIR, the accused surrendered before the concerned police station on 28.06.2021 and on being sent for medical examination, he tested positive for COVID-19 and was quarantine at the Youth Hostel, Shillong. He was thereafter remanded to judicial custody and is still

under custody till date.

5. It is also stated that the charge sheet has already been filed with the I/O indicating that a prima facie case under Section 9(i) /10 POCSO Act r/w Section 506 IPC is made out against the accused.

6. Heard Mr. K. Ch. Gautam, learned counsel for the applicant who has submitted that the accused had surrendered before the Court and was arrested and is now in judicial custody for more than two months. A bail application was moved before the Court below, but the same was rejected citing Section 29 of the POCSO Act and in the meantime, the charge sheet has been filed.

7. Mr. Gautam has further submitted that the only evidence against the accused is the statement of the victim whose statement is very sketchy, inasmuch as, she has stated that she has disclosed about the incident to the other household help who is working in the same house, but the said household help in her statement has denied any such disclosure.

8. Pressing for an order to release the accused on bail, Mr. Gautam has submitted that the rigors of POCSO are very strict and as such, if the accused is kept in custody and not allowed to go on bail to defend his case, he will suffer irreparable injury. However, if enlarged on bail, he is willing to abide with the strictest of conditions imposed by this Court and will provide sufficient surety in this regard.

9. To support his case, learned counsel for the applicant has placed reliance on the following judgments:

- i) ***Dharmander Singh @ Sahep v. The State (Government of NCT, Delhi) Bail Appl. No. 1559/2020, paragraphs 64 to 69 and***
- ii) ***Bhupen Kalita v. State of Assam: 2020 (5) GLR 153, paragraphs 48, 49, 50, 51, 54 and 62.***

10. Mr. H. Abraham, learned GA appearing on behalf of the State respondent has strongly opposed this bail application submitting that the offence involved are very serious and more particularly since the matter has

already been charge sheeted, the trial can be expedited. However, bail at this stage may not be granted.

11. Upon hearing the learned counsels for the parties, before adverting to the facts and circumstances of the case, vis-à-vis consideration of bail, it would not be out of place to cite excerpts from the case of **Harjit Singh v. Inderpreet Singh @ Inder & Anr** wherein the Hon'ble Supreme Court vide order dated 24.08.2021 in Criminal Appeal No. 883 of 2021 has inter alia discussed in substantial details the principles of bail by quoting relevant extracts from a number of decisions by the Apex Court itself.

12. Taking the liberty to quote the observations made in the said **Harjit Singh** case on liberty of a person, the Apex Court at paragraph 7.2 has referred to the case of **Ash Mohammad v. Shiv Raj Singh @ Lalla Babu & Anr: (2012) 9 SCC 446** at paragraph 17 which is reproduced as follows:

*“17. We are absolutely conscious that liberty of a person should not be lightly dealt with, for deprivation of liberty of a person has immense impact on the mind of a person. Incarceration creates a concavity in the personality of an individual. Sometimes it causes a sense of vacuum. Needless to emphasise, the sacrosanctity of liberty is paramount in a civilized society. However, in a democratic body polity which is wedded to the rule of law an individual is expected to grow within the social restrictions sanctioned by law. The individual liberty is restricted by larger social interest and its deprivation must have due sanction of law. In an orderly society an individual is expected to live with dignity having respect for law and also giving due respect to others' rights. It is a well-accepted principle that the concept of liberty is not in the realm of absolutism but is a restricted one. The cry of the collective for justice, its desire for peace and harmony and its necessity for security cannot be allowed to be trivialized. The life of an individual living in a society governed by the rule of law has to be regulated and such regulations which are the source in law subserve the social balance and function as a significant instrument for protection of human rights and security of the collective. It is because fundamentally laws are made for their obedience so that every member of the society lives peacefully in a society to achieve his individual as well as social interest. That is why Edmond Burke while discussing about liberty opined, “it is regulated freedom”.*

13. Again, as regard the principles for grant of bail, the Apex Court has

quoted the case of **Ram Govind Upadhyay v. Sudarshan Singh & Ors: (2002)**

**3 SCC 598** wherein at paragraphs 3 and 4, the following was observed:

*“3. Grant of bail though being a discretionary order - but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic consideration for the grant of bail - more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.*

*4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and nor exhaustive neither there can be any. The considerations being:*

*(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.*

*(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.*

*(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.*

*(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”*

14. It is also well settled that the High Court, or for that matter all Courts dealing with bail jurisdiction are called upon to exercise its discretion judiciously, cautiously and in strict compliance with the basic principles some of which are enumerated below:

(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.

15. In the light of the above, the records including the case diary is to be examined to see whether any prima facie case has been made out against the accused. The accusation is that the victim who is a minor and was working as domestic help in the house of the accused was molested and her modesty was outraged by him on several occasions, inasmuch as, he would inappropriately touch parts of her body which was resisted by her. Finally, when she informed her relatives, the informant who is her elder brother had lodged the FIR on 28.06.2021. On investigation being launched, the I/O has accordingly filed the charge sheet opining that during investigation, a case under Section 9 (1)/10 POCSO Act read with Section 506 IPC is found well established against the accused herein. The matter was accordingly referred for trial.

16. The factual position as it is, is that investigation has been completed and the matter was referred for trial. Therefore, there is no possibility of the accused tampering with the material evidence. As observed, personal liberty being given its due place in the scheme of things, particularly where a person accused of an offence is kept in custody. That an accused must be allowed to prepare his defence adequately has also to be considered by the court.

17. Though this Court is in respectful with proposition of law as expounded in the authorities cited by the learned counsel for the applicant on the aspects of Section 29 of the POCSO Act, however in the context of the case in hand, this would not help the accused as the specific order of the learned Special Court(POCSO) in this regard has not been specifically assailed and

could not have been done so in this instant application.

18. In view of the above, this Court is of the considered opinion that the accused person can be enlarged on bail with certain conditions.

19. Accordingly, the accused person is hereby allowed to go 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.

20. It goes without saying that violation of any of the conditions stated above would render the bail granted to be cancelled in due process of law.

21. With the above, this instant application is disposed of.

22. Registry is directed to return the case records.

**Judge**

Meghalaya  
20.09.2021  
"D. Nary, PS"