

Serial No. 02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 7 of 2021

Date of Decision: 20.09.2021

Smti. Sheba Dhar

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. A.H. Hazarika, 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. On 17.03.2021, an FIR was lodged before the Officer-in-Charge Nartiang P.S by one Smti. Wanki Phawa to the effect that a complaint was made alleging that the accused Shri Wanrah Dhar in the evening of 14.03.2021 had forcefully pulled her daughter to his bedroom and had raped her. The victim had informed the informant only on 16.03.2021 and had accordingly went to the Namdong PHC for medical checkup after which the doctor of the PHC informed the police.
3. On receipt of the FIR, Nartiang P.S Case No. 7(3)2021 u/s 3(a)/4 POCSO Act r/w section 323 IPC was registered and investigation was directed to be conducted. The accused Davidson Dhar @ Wanrah was arrested on 19.03.2021 and is presently under judicial custody.
4. The I/O had then examined the victim girl and has also examined some witnesses related to the case and in the process, the statement of the victim girl

was recorded under Sections 161 and 164 Cr.P.C. After investigation is completed on 29.04.2021, the charge sheet was filed with the I/O sending the accused to face trial before the court for the offence under Section 323 IPC r/w Section 3(a)/4 of the POCSO Act.

5. This instant application u/s 439 Cr.P.C r/w section 31 POCSO Act was preferred by the mother of the accused Shri. Davidson Dhar with a prayer to enlarge the accused person on bail.

6. Heard Mr. K.Ch. Gautam, learned counsel for the applicant who has submitted that the accused has been arrested in connection with the abovementioned case and is in judicial custody for the last 5(five) months and trial has not yet commences. It is also further submitted that the victim is already a major from the information gathered from the Dedication Certificate issued by the Church of God, Meghalaya-Assam which is annexed as Annexure-IV of this application. However, Mr. Gautam has submitted that this is a matter of evidence at the trial and the same will be proved in due course.

7. Pressing for grant of bail to the accused, learned counsel for the applicant has submitted that the accused may be allowed to set his defence outside custody and any conditions imposed by this Court will be strictly adhered to.

8. Mr. A.H. Hazarika, learned GA in his opposition to this application has submitted that the records would show that the case involving the accused has been charge sheeted and that the Trial Court has taken note of the materials on record to reject the earlier bail applications of the accused based on the provision of Section 29 POCSO Act, that is, presumption of guilt of the accused and as such, there being no contrary ground, this application is liable to be rejected.

9. While considering the prayer of the applicant, it would be worthwhile to notice that investigation into the case against the accused has been completed and the matter was charge sheeted. The matter was then taken up by the Trial Court with the case at the stage of supply of copies to the accused.

10. What then is the purpose of incarceration of the accused under the circumstances? In this context, it is but an oft repeated statement that "the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that a bail could not be withheld as a punishment".

11. 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."

12. As observed above, at this juncture, it would be but proper to allow the accused to prepare his defence without the shackles of confinement, howbeit under strict conditions, violation of which would invite cancellation of the liberty of bail granted.

13. Accordingly, this application is hereby allowed and the accused is 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.

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

15. Registry is directed to return the case records.



Judge

Meghalaya
20.09.2021
"D. Nary, PS"