

Serial No.01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No.13/2021

Date of Decision: 17.11.2021

Pankaj Kumar Bhardwaj

Vs.

State of Meghalaya

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. C. Chakraborty, Sr. Adv. with
Mr. R. Nath, Adv.

For the Respondent(s) : Mr. B. Bhattacharjee, AAG with
Mr. A. H. Kharwanlang, GA

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 under Section 439 Cr.P.C with a prayer for release of the petitioner herein on bail on any conditions as may deem fit and proper by this Court. Corresponding reference is Madanrting P.S. Case No.23(03)2021 which was subsequently registered as Special (POCSO) Case No.65/2021 under Section 363 IPC R/W Section 5(1)/6 POCSO Act, 2012.

2. Heard Mr. S. C. Chakraborty, learned Sr. counsel along with Mr. R. Nath, learned counsel appearing for the petitioner, who has submitted that the petitioner herein was arrested in connection with the above mentioned case on the basis of an FIR dated 04.03.2021 lodged by one Shri. Bikash Goshwami who, on finding that his daughter aged about 14 years of age was found missing, had lodged the

said FIR and the petitioner herein was named as the main suspect. Accordingly, the petitioner was arrested.

3. Mr. S. C. Chakraborty has further submitted that the case has travelled beyond the stage of investigation and the I.O. has eventually filed the charge sheet in the 'Final Form' as required u/s 173 Cr.P.C.

4. Copy of the charge sheet including all relevant documents due and entitled to by the petitioner was received by him, the same is being annexed with this instant application.

5. Learned Sr. counsel has led this Court to the statement of the victim under Section 164 Cr.P.C and has submitted that the case involves a relationship between the alleged victim and the accused/petitioner and as such, there is no question of kidnapping in this case. The statement of the alleged victim before the Doctor was also pointed out, wherein the alleged victim has stated before the Doctor who has examined her on 10.03.2021 that she came to Jorhat with her boyfriend who is the accused and stayed in a hotel for 2(two) days. She also confessed that she wanted to marry him and that their relationship has been going on for almost 2(two) months.

6. However, the thrust of the submission of the learned Sr. counsel is on the fact that the matter has been charge sheeted and according to his knowledge, charges have also been framed against the accused and therefore, at this stage, there is no question of tampering with the evidence or witnesses and under the circumstances, taking into account the fact that the petitioner is a young man of 23 years, therefore, prayer for grant of bail is made before this Court with any condition to be imposed for which the petitioner will abide with the same.

7. Also heard Mr. B. Bhattacharjee, learned AAG along with Mr. A. H. Kharwanlang, learned GA who has submitted that the reports reveals that the offences alleged against the petitioner herein are very serious in nature and the same involves a minor girl of about 14 years old.

8. Perusal of the statement made by the alleged victim under Section 164 Cr.P.C, would also show that the accused has used force and deceit to compel the victim girl to run away with him on the said day.

9. Another submission of the learned AAG is that the list of witnesses cited by the prosecution includes a number of persons who are known to the petitioner and as such, if enlarged on bail at this stage, the possibility of influencing the said witness cannot be ruled out, bail at this stage may not be granted.

10. Having heard the submission of the rival parties and on perusal of the application in hand including the contents of the annexures which contain copies of the charge sheet and statement of the witnessess including the statement of the alleged victim, this Court is of the considered opinion that *prima facie* a case under the relevant sections and Law cited in the charge sheet have been made out against the petitioner herein.

11. Be that as it may be, as submitted at the bar the charges have been framed against the accused, for which he is at liberty to argue before charge and to present his case accordingly.

12. As far as the issue of discretion is concerned, the Hon'ble Supreme Court in the case of **Dataram Singh Vs. State of Uttar Pradesh and Anr. (2018) 3 SCC 22** has reiterated the principle of bail as a general rule and keeping the person in jail is an exception. However, at paragraph 6 of the same, the Court has observed

that bail should not be granted in every case and that the grant or refusal of bail is entirely within the discretion of the Judge hearing the matter and that discretion should be exercised judiciously.

13. It is also well settled that on consideration of a bail application, the court must look to the facts and circumstances of each case and normally certain well entrenched guidelines and principles have been laid down for the court to consider, viz.,

- i. *Prima facie* satisfaction of the court that the accused has committed the offence.
- ii. Possibility of the accused absconding and
- iii. Reasonable apprehension of witnesses and evidence being tampered with among others.

14. On the touch stone of the above cited principles, this Court is of the considered opinion that the case of the petitioner for grant of bail cannot be considered at this juncture.

15. Resultantly, this petition is devoid of merit, the same is hereby rejected.

16. Matter is disposed of. No cost.

Judge

Meghalaya
17.11.2021
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