

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 5 of 2021

Date of Decision: 28.06.2021

Shri Abdul Kalam SK

Vs.

State of Meghalaya

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S.A.Sheikh, Adv.

For the Respondent(s) : Mr. H.Kharmih, G.A.

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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 matter has been taken up via video conferencing.
2. This is an application under section 439 Cr.P.C. filed by the Petitioner Shri Abdul Kalam Sk with a prayer for grant of bail on behalf of Shri Habibul Islam who is one of the accused in Special (POCSO) Case No 39 of 2020, pending in the court of the learned Special Judge(POCSO), West Garo Hills, Tura.
3. The brief facts of the case as narrated by the Petitioner in his application is that, on 21.08.2020, an FIR was lodged by one Shri Abdus Salam Akand before the Officer-in Charge, Tura Women Police Station,

West Garo Hills, Tura stating that on 20.08.2020 at about 5.30 pm, when he came home, he saw his minor daughter, aged about 16 years 8 months profusely bleeding and on enquiry, he was informed that she was abducted and gang raped by three persons, viz; Habibul Islam@ Habbul, Mokabbir Hussain and Israful Hoque who had abducted her while she was on her way to tuition class by gagging her mouth and blind folding her after which she was taken to the house of Habibul Islam where she was raped by them. She was later found by one Smti Anisa Khatun who brought her home. The Informant then took her to the Phulbari Police Station and then to the Phulbari PHC from where she was referred to the Maternity and Child hospital, Tura for admission.

4. The Petitioner has further stated that during the course of investigation, the accused Habibul Islam voluntarily submitted to the custody of the police on 27.08.2020 and as duly arrested and was produced before the court of the Special Judge(POCSO), Tura.

5. It is also stated that a number of bail applications were filed before the Trial Court which were rejected and one such application was filed before this Court which was rejected on 12.03.2021.

6. Mr. S.A. Sheikh, learned Counsel for the Petitioner has submitted that the said FIR was lodged only as a counter blast to the fact that admittedly, there is a love affair between the alleged victim and the accused person herein, but for the fact that she is still a minor, being about 17 years of age. However, there are evidence of exchange of message through whatapps/Instagram Messenger and Facebook between the two, which messages were deleted by the victim after the said incident.

7. It is also further submitted that the victim wanted to elope with the accused Habibul who could not persuade her to return home. This fact was also known to many people in the locality.

8. There is also a reference made to the role of the village Panchayat who held a meeting in the house of the Petitioner for the performance of marriage between the two, but since the victim is only 17 years old, the consent of the parents of the victim was sought for but they did not attend the said meeting and the members of the Panchayat took back the victim to her house after which the said FIR was lodged.

9. The learned Counsel has also submitted that the preliminary Charge Sheet was filed in the case and the deposition of the victim was recorded by the Trial Court on 09.04.2021, the next date fixed being 23.05.2021 when the case was not taken up due to the prevailing situation.

10. Under the circumstance, it is submitted that further custody of the accused will not serve any purpose, he is therefore entitled to be enlarged on bail. Furthermore, it is submitted that the accused is innocent of any offence as alleged since the medical report of the victim has shown that there was no sign of sexual assault, the fact that the accused is a college student who is pursuing his final year B.A. from South Salmara, College under the Gauhati University is also one of the grounds taken for consideration by this Court.

11. The learned counsel of the Petitioner has cited the case of "*Dataram Singh v. State of Uttar Pradesh & anr*" (2018) 3 SCC 22 at para 1,2,3 & 4 and the case of "*Vijaya Lakshmi and anr. v. State Rep. by The Inspector of Police, All Women Police Station, Erode. Crime No. 2 of 2018 & Indhran @ Siva*" in CrI.O.P. No. 232 of 2021 vide order dated 27.01.2021 and has submitted that in the case of *Dataram Singh*, the Hon'ble Supreme Court has reiterated the principles of bail as a general rule and putting a person in jail as an exception, while in the case of *Vijaya Lakshmi*, the Hon'ble Madras High Court considering the facts and circumstances of the case therein, taking into account that there was a love relationship between the alleged victim and the accused involved in a

POCSO case, the court in an application under section 482 CrPC has allowed the same and has quashed the case pending before the Trial Court.

12. It is finally prayed that this Court be pleased to grant bail to the accused on any conditions to be imposed which would be duly complied with.

13. Mr. H.Kharmih, the learned G.A. appearing on behalf of the State has strongly opposed this application on the ground that no case is made out for grant of bail to the accused person.

14. The learned GA has also submitted that the question of love affair between the victim and the accused person cannot be established inasmuch as the victim has given her statement clearly indicating that she was raped by three persons including the accused person herein.

15. Upon hearing the learned Counsels for the parties, facts not necessary to be repeated, what is apparent from the records produced before this Court today is that the fact that the FIR was lodged to bring to the attention to the police about the alleged abduction and rape of the said minor victim girl is not denied.

16. The records of the case pending before the Trial Court has been called for and duly produced before this Court and on perusal of the same, the stage of the case as is noticed, is at the stage of evidence with the evidence of the victim already recorded.

17. It is also noticed that the Petitioner in this instant application has touched upon the merits of the case inasmuch as the contents of the medical report was sought to be projected before this Court to question the same. However, in an application for grant of bail, this Court is not required to go into the merits of the evidence.

18. The Petitioner has however made an averment confirming the

fact that the stage of the case is at the recording of evidence of the witnesses, the evidence of the victim having been recorded.

19. Again, it is to be noted here that this is a second bail application of the Petitioner for the same accused Habibul Islam before this Court, but no argument or specific averment has been made by the Petitioner in this regard. It is well settled that in the event of a bail application having been rejected, any number of successive bail applications can be preferred, however, the subsequent application have to indicate a change circumstance(s) to allow the Court to look afresh at the matter for without an averment to the changed circumstances, the second application, as in this instant case, would be deemed to be seeking review of the earlier order which is not permissible in criminal law.

20. In the case of *Dataram Singh* (Supra) cited by the learned counsel for the Petitioner, at paragraph 6 of the same the Hon'ble Supreme Court has also held as follows:

“6. However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to the incapable of compliance, thereby making the grant of bail illusory”.

21. In the above, the Hon'ble Supreme Court has held that granting of bail is entirely within the discretion of the Judge hearing the matter, this application of discretion has to be judicious in nature and as such, facts and circumstances of each case has to be taken into account. While alluding to the principles of bail which has been crystalized in a catena of judgments of the Supreme Court as well as High Courts, it is a foregone conclusion

that one of the main and basic consideration for grant of bail is the nature and gravity of the alleged offence depending of the particular facts and circumstances of the case. In the case involving the accused Habibul Islam, as mentioned above, it centers upon an accusation of not only rape simpliciter, but gang rape, that is, a case of sexual assault by more than one person. In such a case, this Court would view the matter seriously with circumspective. This being the case, it would not be wise to release the accused on bail at this stage.

22. The fact that the case is at the evidence stage, it appears that the Learned Special Judge has proceeded with the matter expeditiously and as such, it would be appropriate to allow the Trial Court to continue with the same till a final verdict as regard the accused as well as the other co-accused is arrived at.

23. Considering the submission of the learned counsel for the Petitioner as regard the fact that the accused Habibul Islam is a student pursuing his studies in BA, this Court hereby directs the jail authorities to provide all the necessary facilities even by allowing the accused/UTP to attend his classes via Online mode.

24. In view of the above observations, this application does not merit consideration and the same is hereby dismissed.

25. Registry to send back the case records.

26. Matter disposed of. No cost.

Judge

Meghalaya

28.06.2021

"N. Swer, Stenographer"