

Serial No. 04
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 18 of 2022

Date of Decision: 14.11.2022

Shri Tingku N. Marak Vs. State of Meghalaya & 3 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. A.M. Bora, Sr. Adv with
Mr. M. Prasad, Adv.
For the Respondent(s) : Mr. N.D. Chullai, AAG with
Ms. R. Colney, GA (R-1)
Ms. I. Lyngwa, Adv. (R. 2-3)
Mr. A. Momin, Adv. (R-4)

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

ORDER

1. The petitioner herein has come before this Court with this application under Section 439 Cr.PC with a prayer for grant of bail to the accused person Shri Bernard N. Marak who is his brother and who was

arrested initially in connection with Tura PS Case No. 166(07)2022 under Section 120/120B/121/121A/109/110 IPC r/w Section 4/5 of the Explosives Substances Act and also in another case being Tura Women PS Case No. 105(07)2022 under Section 3/4/5/6/7 of the Immoral Traffic (Prevention) Act. However, the said accused person was during his incarceration in judicial custody in connection with the abovementioned cases, was also shown arrest in connection with Tura Women PS Case No. 107(07)2022 under Section 5(1)(m)/6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

2. Heard Mr. A.M. Bora, learned Sr. counsel appearing for the petitioner who has submitted that the accused brother of the petitioner was arrested by the police on 27.07.2022, allegedly on the basis of a raid conducted on his landed property known as Rimpu Bagan at Edenbari, West Garo Hills, District wherein it was said that immoral activities was carried out in the said premises resulting in a number of persons being found in compromising position indicating that the place is being used as a brothel and also that the recovery of a number of arms and ammunitions has led the police to register criminal cases under relevant provisions of law.

3. On 29.07.2022, an FIR was lodged by the Chairperson, Member Secretary and Member of the Child Welfare Committed, West Garo Hills, Tura before the Officer-In-Charge Tura Women Police Station indicating to the extent that during the raid that took place at '*Rimpu Bagan*' on 22.07.2022 one child aged about three years was rescued and was placed in the Children's Home (Girls), Tura. Her medical examination was also done at Maternity & Child Hospital, Tura where she was found to have been sexually abused. Accordingly, the police registered a case being Tura Women PS Case No. 105(7)2022. In course of investigation, two persons have been named in this connection that is the father of the said child and the accused brother of the petitioner.

4. The learned Sr. counsel has also submitted that the accused person has not visited his farm house where the alleged incident/rape took place and was absolutely unaware of what was happening there in his absence. As submitted, he was however arrested in connection thereof, only on the ground that he is the owner of the said property. Therefore, there is absolutely no materials or evidence to show that he is involved in the alleged sexual assault of the minor.

5. It is further submitted that the accused is a permanent member of the society being an elected member of the District Council and as such, if released on bail he will abide by any conditions imposed by this Court.

6. Mr. N.D. Chullai, learned AAG along with Ms. R. Colney learned GA appearing for the State respondent has submitted that copy of the case diary as directed to be produced by this Court is hereby submitted for perusal of this Court. It is also submitted that a perusal of the case diary would show that the accused brother of the petitioner is very much involved in the case of sexual assault against the said minor girl for which the Investigating Officer (I/O) has made a prayer for questioning him in custody.

7. Learned counsel for the respondents No. 2 and 3 as well as the learned counsel for respondent No.4 has also endorsed the submission made by the learned AAG.

8. Upon hearing the learned counsels for the parties and on perusal of the case diary, what is evident is that the child who is the daughter of one of the caretakers of the said '*Rimpu Bagan*', was also caught in the melee during the said raid conducted on 22.07.2022 and was noticed by the members of the Child Welfare Committee who took the child and caused medical examination to be carried out on her person following

which, the indication that the child was sexually assaulted was acknowledged by the medical report. Thereafter, the child was placed at the children's home.

9. Records would also show that the father of the said child was arrested in this connection but vide order dated 19.10.2022, the learned Special Judge (POCSO), West Garo Hills Tura had enlarged him on bail in Bail Application No. 262 of 2022. It is also noticed that there is no direct evidence linking the accused brother of the petitioner to the alleged sexual assault of the child but that the only prayer of the I/O is that since the baby girl was rescued from the farm house of the accused person, therefore, his custodial interrogation is very much essential for the interest of the case.

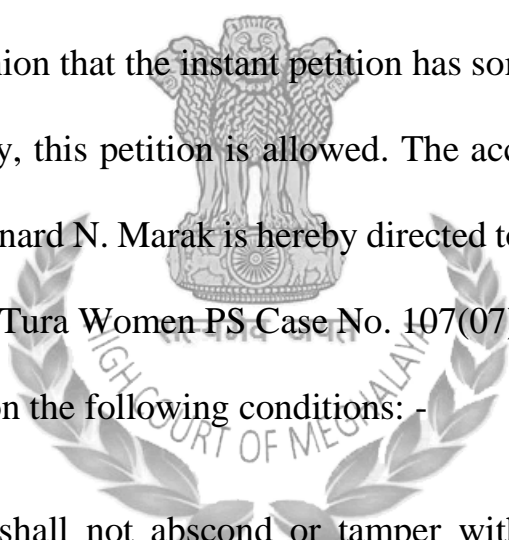
10. A case of sexual assault particularly involving a minor girl is very serious, however, even the medical report suggests that any sexual assault perpetrated against the child was not of recent origin. There is no direct evidence or even indirect evidence linking the accused person to the said sexual assault.

11. There is no impediment to the I/O to carry out the investigation even without the accused person in custody and any relevant evidence collected in course of investigation would be duly considered in course of

the proceedings. Since the accused person was not apprehended along with the minor girl during the said raid, therefore, to say that he is likely to be the offender only because of the fact that he is the owner of the property is too farfetched.

12. On consideration of the facts and circumstances involving the case of the accused brother of the petitioner, keeping in mind the value of liberty of a person who is confined in custody on very flimsy grounds, this Court is of the opinion that the instant petition has some merits.

13. Accordingly, this petition is allowed. The accused brother of the petitioner, Shri Bernard N. Marak is hereby directed to be released on bail in connection with Tura Women PS Case No. 107(07)2022, if not wanted in any other case, on the following conditions: -

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- (i) That he shall not abscond or tamper with the evidence and witnesses;
 - (ii) That he shall appear before the Investigating Officer as and when required;
 - (iii) That he shall not to leave the jurisdiction of India without prior permission of the court; and

(iv) That he shall furnish a personal bond of ₹ 30,000/- (rupees thirty thousand) only with two solvent sureties of like amount to the satisfaction of the concerned court.

14. With the above, this petition is hereby disposed of. No costs.

Meghalaya
14.11.2022
"N. Swar, Stenographer"



Judge