



Serial No. 27
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

AB. No. 15 of 2021

Date of Decision: 07.02.2022

Shri Sakirul Miah Vs. State of Meghalaya

Coram:

Hon’ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. A. S. Siddiqui, Sr. Adv, with
Ms. M.K. Sah, Adv.
For the Respondent(s) : Mr. R. Gurung, 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. Heard learned Sr. Counsel Mr. A. S. Siddiqui along with Ms. M.K. Sah learned counsel who has submitted that the petitioner on being apprehensive of imminent arrest in connection with Ampati Women PS Case No. 20(11)2021 under section 3(a)/4 of POCSO Act r/w section 447 IPC has approached this Court by way of this application under section 438 Cr.PC for grant of pre-arrest bail.
3. The petitioner’s version is that he is a carpenter by profession and has a partner Shri Monzil Miah of the same village that is Nayapara. In course of their business relation, the petitioner made an allegation that Shri Monzil Miah had mis-appropriated his profit share of the business and when he went to his



house (Monzil Miah) requesting for payment, the said Monzil Miah along with his wife and other persons locked him in a room. Somehow, the petitioner managed to flee from there.

4. To the surprise of the petitioner, he later learnt that the wife of Monzil Miah had lodged an FIR on 22.11.2021 alleging that he had trespass into the house and had gone to the room of his minor daughter and had sexually assaulted her.

5. The learned Sr. Counsel has further submitted that when the petitioner did not come home, his elder sister had lodged an FIR on 23.11.2021 informing the police about his disappearance and has also alleged that Shri Monzil Miah is suspected to be behind the said disappearance.

6. However, the petitioner later came to know that the police are on the lookout for him in connection with the said FIR lodged by the wife of Shri Monzil Miah and as such, being apprehensive of the likelihood of arrest, the petitioner has accordingly approached this Court as aforesaid.

7. The learned Sr. counsel has submitted that the petitioner is innocent and he is not at all involved in the alleged sexual assault, the same was made only to intimidate him when in fact, he was the one who was assaulted and illegally confined by the complainant and her husband and others.

8. It is also submitted that this Court had granted interim bail to the petitioner and accordingly, the petitioner had appeared before the Investigating Officer and has fully cooperated with the proceedings.

9. The petitioner, if enlarged on bail will abide by any conditions imposed by this Court and will not indulge in any illegal or anti-social activities.

10. Mr. R. Gurung learned GA while opposing the prayer made in this application, has submitted that the contents of the case diary would show that the petitioner has actually committed the offence as alleged inasmuch as from the statement of the victim girl and the medical report, it is very clear that she



has been sexually assaulted by the petitioner. However, in the light of such serious allegation, the Investigating Officer is required to question the petitioner in custody and as such, the prayer for pre-arrest bail may not be granted.

11. Upon hearing the submissions made by the parties and on perusal of the case diary, it is noticed that the Investigating Officer on receipt of the instruction from the Officer In-Charge, Ampati Police Station had taken necessary action inasmuch as, the alleged victim girl was referred to Ampati Civil Hospital for medical examination which was done so on 23.11.2021. The medical report would show that there are indications of sexual activity inasmuch as, the M & HO had opined that on examination, the hymen was torn with bruises at the forearm. The alleged victim in her statement under section 161 Cr.PC had also narrated that while she was studying for her matriculation on 22.11.2021, at around 2:00PM, the petitioner/accused person entered from the door and grabbed her mouth with his hand and then dragged her to the bed, after which he raped her. At that time, the mother of the alleged victim came inside the room and caught the petitioner/accused person and tied both his hands with a rope and also called some people from the locality to help her after which the accused was locked in a room. However, on the pretext of going to the urinal, the petitioner/accused person managed to flee from the place of occurrence.

12. The preliminary investigation and findings would show that there is prima facie evidence that the accused had committed sexual assault, however, it is a matter of evidence at the trial to prove the same. At this juncture, what is required is for the Investigating Officer to complete the investigation. It is trite that questioning of an accused may not necessarily be under confinement or in custody, if the person concerned submits himself to the authority of the Investigating Officer and fully cooperate with the investigation, there is no requirement that he should be incarcerated in custody.

13. The petitioner in this case is a young person of 18 years old and with



no criminal antecedent. As far as apprehension of arrest is concerned, circumstances have proven that the petitioner's fear is not misplaced.

14. Without interfering with the process of investigation, the petitioner may be enlarged on bail if arrested and as mentioned above, provided he fully cooperates with the investigation.

15. In view of the above, this application is allowed and in the event of his arrest, the petitioner is directed to be enlarged on bail on the following conditions that: -

- (i) He shall not abscond or tamper with the evidence and witnesses;
- (ii) He shall refrain from any encounter with the alleged victim during the pendency of the proceedings;
- (iii) He shall not leave the jurisdiction of India without prior permission from the Investigating Officer;
- (iv) He shall fully cooperate with the Investigating Officer and;
- (v) He shall bind himself by way of a personal bond valued at ₹ 20,000/- (rupees twenty thousand) only with two sureties of like amount.

16. Registry is directed to return the case diary.

17. With the above, this application is hereby disposed of. No cost.

Judge

Meghalaya

07.02.2022

"N. Swer, Stenographer"