

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

Bail Appln. No. 27 of 2021

Md. Hassan, aged about 22 years, S/o. Md. Serajuddin
@ Kheiba of Moijing Konjil Leikai, P.S. & P.O-Thoubal,
Thoubal District, Manipur now at present residing at
Manipur Central Jail, Sajiwa

...Petitioner/Accused Person.

-Versus –

The Officer-in -Charge, Women Police Station, Imphal East
District, P.O & P.S-Porompat, 795005, Manipur.

...Respondent.

BEFORE

HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Petitioner

::

Mr. Th. Jugindro, Advocate

For the Respondents

::

Mr. H. Samarjit, PP

Date of Hearing and
& Judgment & Order

::

13.06.2022

JUDGMENT AND ORDER
(ORAL)

This petition has been filed by the petitioner under
Section 439 Cr.P.C to enlarge him on bail in connection with the
Special Trial (POCSO) Case No.8 of 2019/14/2020 with reference

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to FIR No.19(08)2018 on the file of the Fast Track Special Court
No.2, Manipur.

2.

The case of the prosecution is that on 16.8.2018 at

5.10 p.m., the complainant reported to the Officer-in-Charge of
Heingang Police Station that his daughter was kidnapped from his
house by the petitioner to be his wife without her consent and she

was kept concealed in collusion with the family members of the petitioner. Upon receipt of the complaint, the Officer-in-Charge of Heingang Police Station forwarded the said complaint to the Officer-in-Charge of Women Police Station, Imphal East and the Women Police Station registered the FIR bearing FIR No.19 of 2018 against the petitioner under Section 366A/34 IPC and Section 4 of POCSO Act, 2012 on 05.12.2019. The petitioner was arrested on 5.2.2019 and after investigation, the investigating officer has filed chargesheet against the petitioner before the Fast Track Special Court No.2, Manipur and cognizance was taken as Special Trial (POCSO) Case No.8 of 2019.

3.

Mr. Th. Jugindro, the learned counsel for the petitioner

submitted that the petitioner is an innocent and has been falsely implicated in the alleged crime.

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He would submit that before

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submitting the charge-sheet in connection with the aforesaid FIR, the petitioner had co-operated with the investigating officer. Since charge-sheet has been filed and the trial is about to begin, there is no question of hamper or tamper with any prosecution evidence or terrorize the witnesses after the petitioner is released on bail.

4.

The learned counsel further submitted that the

petitioner is in jail from 5.2.2019 and that there was no chance that the trial will be conducted in near future as earliest or in other words the trial will take long time. Earlier, the petitioner had approached the trial Court for bail and the same was rejected vide order dated 24.8.2021 in Criminal Miscellaneous (B) No.8 of 2021 without properly appreciating the submission of the petitioner.

5.

The learned counsel urged that the petitioner who is a

mason by profession is the only earning member having his mother suffering from critical illness (chronic kidney disease) since last ten years. The petitioner is the only son to look after his illness mother, who is now taking treatment at Dispur Hospital Private Limited, Dispur, Guwahati.

6.

The learned counsel submitted that as per the

documents including the medical report, it is clear that no offence

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under Section 4 of the POCSO Act has been made out against the petitioner and no evidence for the commission of any sexual offence against the petitioner. Thus, a prayer is made to enlarge the petitioner on bail.

7.

By placing reliance upon the orders of this Court in Bail

Application No.26 of 2021 [ThokchomSuraj Singh v. The Officer-inCharge, Lamphet Police Station] and Bail Application No.8 of 2021

[AbujamTombisana Singh v. State of Manipur], decided on 24.5.2022, the learned counsel submitted that the general policy of law is to allow bail rather than refuse it and bail should not be withheld as a measure of punishment or for the purpose of putting obstacles in the way of defence.

8.

Per contra, Mr. H. Samarjit, the learned Additional

Public Prosecutor submitted that during the course of investigation, the investigating officer collected material evidences and had also recorded the statements of the victim and other witnesses. He would submit that since the crime committed by the petitioner is a very heinous and the victim was aged 13 years at the time of crime, he cannot be enlarged on bail. Further, the petitioner had left a scar upon the young and tender life of the victim which will remain

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throughout her life. If the petitioner is released on bail at this stage he is likely to abscond to avoid the trial and he is also likely to threaten the victim and her family members and also the other important witnesses. Considering the gravity of the offence, the learned Additional Public Prosecutor, prayed for dismissal of the petition.

9.

This Court considered the submissions made by the

learned counsel for the petitioner and the learned Additional Public Prosecutor and also perused the materials available on record.

10.

The allegation against the petitioner is that on

16.8.2018 the petitioner kidnapped the victim from her house to be his wife without her consent and the victim was concealed in collusion with the family members of the petitioner. As such, a complaint was lodged by Md.Gayazuddin, father of the victim against the petitioner before Heingang Police Station and upon

receipt of the complaint, Heingang police forwarded the complaint to the Women Police Station, Imphal East and an FIR bearing No.19 of 2018 was registered against the petitioner under Section 366A/34 IPC read with Section 4 of POCSO Act.

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11.

Admittedly, the investigation was completed and

charge-sheet has also been filed and the case has been taken on file as Special Trial (POCSO) Case No.8 of 2019 on the file of the Learned Fast Track Special Court No.2, Manipur.

12.

There is no dispute that petitioner was arrested on

5.2.2019 and since then he was in custody. The bail application moved by the petitioner before the Fast Track Special Court No.2, Manipur was rejected by the order dated 24.8.2021 on the ground that the offences are heinous and severe. The petitioner seeking bail on two grounds, namely, he was in custody for more than 3 years without any progress in the trial and he has to look after his mother who is suffering from serious illness.

13.

On the other hand, the learned Additional Public

Prosecutor submitted that though cognizance was taken, due to lockdown and curfew of Covid-19 pandemic, further proceedings in the case could not be continued. Since the situation is gradually coming to normalcy, the trial of the case may be proceeded very shortly.

14.

As stated supra, the petitioner is in judicial custody for

more than 3 years. Keeping a under-trial prisoner in custody for

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years together and non-progress of the trial was delayed on the ground of Covid-19 pandemic is not acceptable. In the instant case, investigation completed, charge-sheet filed and the case is taken on file. When the investigation completed and charge-sheet filed, the accused person can be enlarged on bail. Though cognizance was taken in the year 2019, the trial of the case has not been commenced and nothing has been produced by the prosecution to show that the prosecution has taken effective steps to proceed with the matter further and the petitioner is delaying the trial.

15.

The trial Court rejected the bail petition of the petitioner

on the ground that the offences are heinous. Coming to the ground for rejection of the bail by the trial Court, this Court is of the view that the merits of the offence alleged against the petitioner cannot be gone into. It is true that the offence committed by a person under POCSO Act should not be enlarged on bail like other offences.

16.

It is settled that the grant or refusal to grant bail lies

within the discretion of the Court. The grant or denial is regulated to a large extent by the facts and circumstances of each particular case. In the case on hand, the petitioner seeks bail mainly on the ground that he was in custody for more than 3 years.

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17.

It appears that the offence alleged was dated

16.8.2018 and the complaint was lodged on the same date and the petitioner was arrested on 5.2.2019. As stated supra, it is not the case of the prosecution that the petitioner is delaying the trial of the case and according to the petitioner, there is no question of hamper or tamper with any prosecution evidence after he is released on bail.

18.

In Alakh Alok Srivasta v. Union of India and others,

(2018) 17 SCC 291, the Hon'ble Supreme Court directed for constitution of Special Courts to deal with the cases under the POCSO Act and issued direction to the High Courts to give suitable Instructions to the Special Courts to fast track the cases by not granting unnecessary adjournments and following the procedure laid down in the POCSO Act and complete the trial in a time bound manner or within a specific time frame under the Act

19.

As per Section 35 of the POCSO Act, evidence of the

child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and the reason for delay, if any, shall be recorded by the Special Court. The provision of the POCSO Act further provides that the Special Court shall complete

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the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.

20.

In the instant case, there is nothing on record to show

that the petitioner is delaying the trial of the case. May be, due to pandemic and the related lockdowns and also the restricted functioning of the Courts during pandemic, the trial is delayed.

21.

It is apposite to mention that when the under-trial

prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution of India is violated. Every person, detained or arrested, is entitled to speedy trial and the Act also provides time frame to complete the trial. Merely the fact that the offence allegedly committed by the petitioner was registered under Section 4 of the POCSO Act, the petitioner cannot be denied bail on the ground that the offence is serious in nature.

22.

In Babba v. State of Maharashtra, (2005) 11 SCC 569,

the Hon'ble Supreme Court held that when there is delay in the trial, bail should be granted to the accused. In the instant case, admittedly, there is a delay in the trial.

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23.

The right to bail is not to be denied merely because of

the sentiments of the society and/or community against the accused. The law is well settled that the primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required.

24.

In Sanjay Chandra v. CBI, (2012) 1 SCC 40, the

Hon'ble Supreme Court 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.”

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25.

Time and again, the Hon'ble Supreme Court held that

bail is the rule and committal to jail is an exception The Courts have also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution of India.

26.

The principles relating to grant or refusal of bail have

been stated in the case of Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528. In Kalyan Chandra Sarkar (supra), the Hon'ble Supreme Court observed that the Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the Court granting bail to consider among other circumstances and the following facts also before granting bail; they are:

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(a)

The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b)

Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c)

Prima face satisfaction of the Court in support of the charge.

27.

In *Dataram Singh v. State of Uttar Pradesh* and

another, (2018) 3 SCC 22, the Hon'ble Supreme Court observed that a fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences, but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correctional home is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons

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are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

28.

Thus, it is clear that grant or denial of bail is entirely

the discretion of the Judge considering the case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by the Hon'ble Supreme Court as well as by the High Courts in the country.

29.

To put it shortly, a humane attitude is required to be

adopted by a Judge while dealing with the bail application. Even if the offence is a serious offence, requires a humane treatment by the Court. Humane treatment to all, including an accused is the requirement of law. Furthermore, it is the case of the petitioner that his mother is suffering chronic kidney disease and he is the only

son to take care of her. To convert the said plea, nothing has been produced by the prosecution.

30.

The learned counsel for the petitioner submitted that

the petitioner is innocent person. On the other hand, it is the submission of the learned Additional Public Prosecutor that under Section 29 of the POCSO Act, it is presumed that the petitioner has committed the offence unless the contrary is proved. The innocence

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and the alleged involvement of the petitioner in the crime cannot now be gone into, as the trial is yet to begin. Therefore, as stated supra, this Court has not delved into the merits of the case.

31.

It is true that victims of POCSO Act, are suffering and

facing social stigma, agony and trauma because of the occurrence and could not recover completely from the said heinous incident. In some of the cases, the minor victims are suffering not only mental trauma, agony, social ostracisation, but also withdrawn from the society. During the course of argument, learned counsel for the petitioner assures that the petitioner will not hamper or tamper the prosecution witnesses.

32.

Considering the facts and circumstances of the case

and also taking note of the fact that the petitioner is in custody for more than 3 years and the trial has not commenced and in view of the undertaking given by the petitioner that he will not hamper or tamper the prosecution witnesses, this Court persuaded to grant bail to the petitioner.

33.

Accordingly, the petition is allowed and the petitioner

is ordered to be enlarged on bail in connection with the Special Trial (POCSO) Case No.8 of 2021 on the file of the Fast Track Special

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Court No.2, Manipur, subject to his furnishing a personal bond in the sum of Rs.25,000/- with two local sureties in the like amount to the satisfaction of the trial Court with the following conditions:

(i) The petitioner shall not leave the place of residence without permission of the trial Court and shall ordinarily reside at a place of

residence and the complete address of such place shall be furnished to the trial Court at the time of release.

(ii) The

petitioner

shall

report

before

the

respondent police daily at 10.00 a.m. for a period of two weeks.

(iii) The petitioner shall appear before the trial Court on all hearing dates and shall cooperate for speedy disposal of the case.

(iv) If the petitioner has a passport, he shall also surrender the same to the trial Court.

(v) The petitioner shall not contact, visit or threaten or offer any inducement to the victim or the complainant or any of the prosecution witnesses.

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(vi) The petitioner shall not tamper with evidence nor otherwise indulge in any act or omission that would prejudice the proceedings in the matter.

(vii) It is clarified that if the petitioner misuses the liberty or violate any of the conditions imposed upon him, the prosecution shall be free to move this Court for cancellation of the bail.

34.

The trial Court is directed to complete the trial of the

case within a period of six months from the date of receipt of a copy of this order and send a report to this Court within ten days from the date of delivery of judgment.

35.

Any observations made hereinabove shall not be

construed to be a reflection on the merits of the case and shall remain confined to the disposal of the present bail petition.

JUDGE
FR/NFR
Sushil

