

(2025) 06 MEG CK 0350

In the Meghalaya High Court

Case No : Bail Application. No. 27 Of 2025

Memory Timung

APPELLANT

Vs

State Of Meghalaya & Ors.

RESPONDENT

Date of Decision : 20-06-2025

Acts Referred:

India Penal Code, 1860 — Section 354A(1)(i)(iv), 376(D), 365, 376(2)(j)(k)(1)
Rights Of Person With Disabilities Act, 2016 — Section 92(b)

Citation : (2025) 06 MEG CK 0350

Hon'ble Judges : W. Diengdoh, J

Bench : Single Bench

Advocate : S. Pandit, S.D. Sangma, K. Khan, S. Sengupta, H. Kharmih, S. Nongsiej

Final Decision : Disposed Of

Judgement

W. Diengdoh, J

1. Heard Mr. S. Pandit, learned counsel for the petitioner, who has submitted that the petitioner is the sister of the accused person, Shri. Sambha Timung, who was arrested on 25.05.2024 by the police of West Jaintia Hills District, on the basis of an allegation made against him and another person that they were involved in a case of kidnap of one person aged about 20 years, said to be mentally challenged, and having taken her in their vehicle, they had also committed rape on her.

2. On an FIR being lodged on 25.05.2024, both the accused persons were arrested.

3. It is also the submission of the learned counsel that the matter being investigated on a case being registered as Women P.S. Case No. 21 (05) 2024 under Section 365/354A (1) (i) (iv)/376 (2) (j) (k) (1)/376 (D) IPC read with Section 92 (b) of the Rights of person with Disabilities Act, 2016, the Investigating Officer in due course, has filed the charge sheet finding a prima

facie case well-established against the accused persons, and that they may be put up for trial before the competent court of jurisdiction. Accordingly, both the accused persons in question are now facing trial with one witness, who is the complainant being examined in court as PW. 1.

4. The learned counsel has also submitted that the accused person in question has been languishing in prison for more than a year, and in the intervening period of his incarceration, he was also found to have suffered certain ailments, for which the Trial Court has granted him interim bail, to allow him to get his sickness treated, and on expiry of the period of the said interim bail, he was once again brought to custody.

5. The learned counsel has stressed on the fact that till date, the accused person in question is not yet fit physically and would require medical attention from time to time. However, the learned counsel has also emphasized on the fact that, since the charge sheet has already been filed, there is no more requirement for any custodial interrogation or questioning of the accused person, and, if released on bail at this point of time, there is also no scope for him to tamper with the evidence or to intimidate the witnesses. To allow the accused person to freely defend his case, he may be enlarged on bail, further submits the learned counsel.

6. The learned counsel also submits that the accused person in question has no criminal antecedent, and, if released on bail, he is prepared to abide by any conditions deemed fit and proper to be imposed by this Court.

7. Per contra, Ms. S. Nongsiej, learned Legal Aid Counsel appearing on behalf of the respondent No. 2/complainant, has strongly objected to the prayer made on the ground that the victim involved, is a person who is medically determined to be of moderate mental retardation with 75% disability. This being the case, she was unduly taken advantage of by the accused persons including the accused person in question, and she had also narrated the incident, wherein she had clearly implicated the accused person to have committed sexual assault on her person. It is therefore submitted that, if enlarged on bail, there is every possibility of the accused person to threaten the victim, and this in turn, would create a situation where she would live in constant fear and apprehensive of danger to her person, this would affect her mental state of mind. Accordingly, she submits that the prayer made in this petition may not be allowed.

8. It is also the submission of the learned Legal Aid Counsel that the victim has identified the accused person, who had perpetrated such a gruesome act upon her.

9. Mr. K. Khan, learned PP assisted by Mr. S. Sengupta and Mr. H. Kharmih, learned Addl. PP for the State respondent, in his submission, has also endorsed the submission made by the learned Legal Aid Counsel, to the extent that the condition of the victim has been brought to the fore, inasmuch as, being a person with disability and of low IQ, her mental state of mind is to be considered if any order is passed in this instant petition, since this case is unique and

different from similarly situated cases, the victim herein as has been pointed out being taken advantage of by the accused person. Under such circumstances, it is prayed that this petition may be dismissed as devoid of merits.

10. It is also the submission of the learned PP that, bail at this point of time, would be premature since the evidence of the victim is yet to be recorded and the reliance of the petitioner on delay may not be sustained, the case in hand as has been stated, is unique in character and has to be handled delicately, even by the courts.

11. This Court has given grave consideration to the submission made, and has also perused the materials on record. It is a fact that the accused person was arrested along with another co-accused person in connection with the allegation that they have kidnapped and committed rape on the victim, who is mentally challenged and with about 75% disability.

12. The case is no doubt serious in nature, but it has to be reminded that when an application for grant of bail is preferred at the stage when the charge sheet has been filed, it would be incumbent upon the court to consider the evidence on record. The statement of the victim made before the learned Magistrate did name two persons as the perpetrator i.e. one Bahdeng and Duh, prima facie, it cannot be definitely established as to whether this Bahdeng and Duh are the two accused persons in question. Notwithstanding the fact that the statement of the victim has to take precedents above anything else, yet at this point of time, it would not be proper for this Court to come to any conclusion on this point, that being the matter within the premise of the Trial Court.

13. The fact that the case has travelled for quite some time, and the accused person in question was in custody for a year or so, and is also ailing, with 22(twenty-two) witnesses to be examined in court, it can be safely said that the conclusion of the trial would take some time. Even in the face of the grievous offences, the court should not lose sight of the fact that an accused person is presumed to be innocent until proven guilty, and taking into account attending factors, his right as enshrined under the Constitution of India cannot be taken for granted by the court. This being the case, in the peculiar facts and circumstances of the case, this Court is inclined to allow the prayer of the petitioner.

14. Accordingly, the accused person, Shri. Sambha Timung is directed to be released on bail on the following conditions that:

- i) He shall not abscond or tamper with the evidence and witnesses;
- ii) He shall appear before the Trial Court as and when required;
- iii) He shall not leave the jurisdiction of Meghalaya without prior permission of the Trial Court;
- iv) He shall have no contact whatsoever with the survivor/victim till completion of the trial, and would do so, only on specific order of the Trial Court, if so

required; and

v) He shall bind himself on a personal bond of Rs. 30,000/-(Rupees thirty thousand) only with one surety of like amount to the satisfaction of the Trial Court.

15. Needless to say, as is the usual caution made by this Court in similar cases, violation of any of the above conditions, would allow the prosecution to take steps for cancellation of the bail granted which may be done so before the Trial Court.

16. With the above noted observations, this petition is accordingly disposed of. No costs.