

(2017) 03 MEG CK 0031
In the Meghalaya High Court
Case No : 5 of 2017

Shri Konasson Rodborne

APPELLANT

Vs

State of Meghalaya

RESPONDENT

Date of Decision : 16-03-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 438](#) -
[Code of Criminal Procedure, 1973](#), [Section 161](#) -
[Section 164](#) - Examination of witnesses by police -
Re

Citation : (2017) 03 MEG CK 0031

Hon'ble Judges : Dinesh Maheshwari

Bench : Single Bench

Advocate : S. Kumar, S Sen Gupta

Judgement

1. The petitioner, engaged as a teacher at Tlong Umiam Secondary School, Weilyngkut, Sohiong, East Khasi Hills District, Meghalaya, has filed

this application seeking pre-arrest bail in relation to Laban P.S. Case No. 16 (02) of 2017 wherein, the investigation is under way for offences

under Sections 5 (f) (p)/11 (iv) (v) of the POCSO Act read with Sections 506 IPC. The prayer for such grant of pre-arrest bail was declined by

the Special Judge, POCSO, Shillong by the order dated 01.03.2017.

2. It is essentially contended on behalf of the petitioner that the FIR in question has not been filed by the alleged victims or their relatives but has

been filed by other persons, who have no connectivity with the alleged victims and who have no personal knowledge of any of the facts sought to

be alleged. It is submitted that the applicants are only the over-adventurous persons, who are attempting to thwart the justice and any action by the

police at their behest would only cause harassment and prejudice to the petitioner. It is also submitted that the petitioner is the only breadwinner of the family having five children and is working as a teacher; and that the petitioner and his family would suffer irreparable injury if the petitioner is arrested in relation to this case. It is also submitted that the allegations are entirely baseless as the petitioner has not committed any offence and he has been falsely implicated in the matter. Learned counsel for the petitioner has referred to the decision of the Hon''ble Supreme Court in the case of Bhadresh Bipinbhai Sheth v. State of Gujarat and another : (2016) 1 SCC 152.

3. Learned Public Prosecutor has placed the Case diary before the Court and has strongly opposed the prayer for grant of pre-arrest bail to the petitioner. During the course of consideration of the matter, in response to the query of the Court, learned Public Prosecutor submitted that after recording of the statements of the alleged victims under Sections 161 CrPC and their medical examination, the prayer was made for recording of their statements under Section 164 CrPC but the same could not be recorded on the given dates i.e., 06.03.2017 and 07.03.2017 for the reason that the alleged victims were appearing in Matriculation Examination; and now, the Magistrate has re-fixed the matter for recording such statements on 28.03.2017 and 29.03.2017.

4. The applicable principles for consideration of a prayer for anticipatory bail as delineated by the Hon''ble Supreme Court in the case of Bhadresh Bipinbhai Sheth v. State of Gujarat and another (supra) make it clear that the power vested in the Court under Section 438 CPC is required to be exercised depending on the facts and circumstances of the case and that there are no straitjacket formule for grant or refusal of anticipatory bail; and ultimately every case is required to be examined on the basis of its own facts and circumstances. On the facts, the said case stand on entirely different footing where the allegations related to 17 years old incident and where the learned Sessions Judge had granted anticipatory bail that was interfered with by the High Court on such considerations which were not approved by the Hon''ble Supreme Court.

5. This matter is being examined at the stage where several aspects of the investigation are yet to be undergone including recording of the statements of the alleged victims under Section 164 Cr.PC. However, having

perused the allegations made in the FIR and the statements as said to have been recorded by the Investigating Officer as also the medical reports concerning the victims, it cannot be said at this juncture that there are no elements of offence against the petitioner. In the given facts and circumstances of the case, where the allegations are of the petitioner being involved in the offence aforesaid with the students of the school, this Court does not feel to inclined to grant indulgence of pre-arrest bail to the petitioner and therefore, this application is required to be rejected.

6. However, before parting with the matter, an aspect, per force, requires observations and comments by this Court. Looking to the nature of allegations and the circumstances of this case, it was definitely required that the investigating agency got the statements of the alleged victims recorded under Section 164 Cr.PC at the earliest; and a sense of urgency should have been shown by the investigating agency as also by the learned Special Judge, POCSO cases and equally by the Magistrate concerned, whom the matter was endorsed for recording the statements. In this matter, a routine nature adjournment could not have been granted.

7. Upon this Court making the observations foregoing, the learned Public Prosecutor has assured that the request shall be made to the Magistrate concerned for immediate recording of the statements of the victims, whose Matriculation Examinations are said to be over. It shall be required of the Magistrate concerned to take note of the observations foregoing and to ensure that the statements of the concerned persons are recorded immediately and without further delay.

8. Subject to the observations foregoing, this application stands rejected.