

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
BA(SH) No. 116 of 2013

13.09.2013

Heard Mr. KC Gautam, the learned counsel for the petitioner who submits that, the accused person namely; **Shri. Arvind Kumar Choubey** was arrested on 18.08.13 on the basis lodged by the complainant and was booked under Nongpoh P.S. Case No. 133 (8) of 2013 u/s 420/403 IPC. Since then he was in custody for almost 25 days, so he may be allowed to go on bail.

The learned counsel further contended that, bail application was moved before the learned Court below and the same was rejected, hence approached this Court with a prayer to release the accused.

In response to the order passed by this Court vide order dated 6.09.13, CD was produced by Mrs. NG Shylla, the learned Addl. PP.

The learned Addl. PP submits that, investigation is almost completed and the police is going to file a charge-sheet within a short span of time. If it is so, I am of the considered view that further custody of the accused may not be necessary; therefore I do not see any impediment to allow the accused to go on bail. Accordingly, he is allowed to go on bail with a sum of Rs. 50,000/- with one of the like amount subject to the satisfaction of the learned Court below on the following conditions.

- i) He shall not interfere with the investigation or tamper any evidence.
- ii) He shall be bound to face the trial as and when necessary.

With these observations and directions, the instant bail application is allowed and the matter stands disposed of.

Court Master is directed to return the CD to the learned Addl. PP immediately.

JUDGE

V. Lyndem

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
BA(SH) No. 113 of 2013

13.09.2013

Heard Mr. B Barman, the learned counsel for the petitioner who submits that the accused persons namely; **Raju Sk (Seikh) and Abu Sayed Hosain @ Babul** were arrested on 21.06.13 in connection with Tura Women P.S. Case No. 27(6) of 2013 u/s 376(2)(K)/307/34 IPC and since then they were in custody for almost 85 days, so they may be allowed to go on bail.

The learned counsel further contended that bail application was also moved before the learned Court below and the same was rejected.

In response to the order passed by this Court vide order dated 30.08.13, CD has been produced before this Court by Mr. ND Chullai, the learned senior state counsel.

The learned senior state counsel contended that Section-12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 put restriction to grant bail in case of juvenile and also further contended that granting bail in case of juvenile, procedures laid down by CrPC will not be applicable.

I have perused Section-12 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

On perusal of the said Section referred to above, it appears to me that, in case of granting bail to a juvenile, legislature has made provision of bail liberal except put restriction that; a person should not be released if it appears that on being release, he will commit the same offence or expose to moral, physical or psychological danger.

After perusal of the said Section, it is clear that Section-12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 cannot supersede the provision of Section-167 CrPC. Therefore, I am unable to agree with the submissions advanced by the learned senior state counsel. Since the accused persons are in custody for almost 85 days and since there is nothing on record to show that, if they are released they may go back to the same trade or will commit further offences, hence, they are allowed to go on bail with a sum of Rs. 40,000/- each with one surety each of the

like amount subject to the satisfaction of the learned Court below on the following conditions.

- i) They shall not interfere with the investigation or tamper any evidence.
- ii) They shall not involve in any kind of activities and they shall be bound to face the trail as and when necessary.

With these observations and directions, the instant bails application is allowed the matter stands disposed of.

JUDGE

V. Lyndem

**BEFORE
HON'BLE MR. JUSTICE S.R. SEN
Cont. Case (C)(SH) No. 29 of 2013**

13.09.2013

Heard Mr. HL Shangreiso, the learned counsel for the petitioner.

Issue notice to the respondents to show cause why this instant petition should not be considered or any order or orders should not be passed as deemed fit and proper.

Notice is made returnable within 3(three) weeks.

However, the petitioner to take necessary steps to serve notice upon the respondents within 3(three) days along with copies of the writ petition and annexures.

List this matter on 4.10.13.

JUDGE

V. Lyndem

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
MC(SH) No. 296 of 2013 in
WP(C)(SH) No. 267 of 2013

13.09.2013

Heard Mr. K Paul, the learned counsel for the applicant.

Seen also the petition.

Since the matter in question involves for the development of public works, in my considered view stay cannot be just passed whimsically or in strait jacket formula because it may hamper public works, hence, I am not inclined to entertain the stay petition at this stage. However, if it is necessary, stay petition will be considered in due course of time.

List this matter along with WP(C)(SH) No. 267 of 2013.

JUDGE

V. Lyndem

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
WP(C)(SH) No. 265 of 2013

13.09.2013

Heard Mr. M Chanda, the learned counsel for the petitioner.

Issue notice to the respondents to show cause why this instant petition should not be admitted or any order or orders should not be passed as deemed fit and proper.

Notice is made returnable within 4(four) weeks.

The petitioner's counsel to take necessary steps to serve notice upon the respondents within 3(three) days along with copies of the petition and annexures. Since Mr. R Debnath, the learned counsel for respondent No. 1 is present and accepted notice, no further notice is called for. However, the learned counsel for the petitioner to take necessary steps to serve notice upon the other respondents.

The learned counsel for the petitioner also pressed for stay the impugned order dated 19.06.13 but I am not inclined to pass any stay order at this juncture, however, the petitioner should not be removed from the job till final disposal of this petition or any order passed by this Court.

List this matter on 21.10.13.

JUDGE

V. Lyndem

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
WP(C)(SH) No. 266 of 2013

13.09.2013

Heard Mr. M Chanda, the learned counsel for the petitioner.

Issue notice to the respondents to show cause why this instant petition should not be admitted or any order or orders should not be passed as deemed fit and proper.

Notice is made returnable within 4(four) weeks.

However, the petitioner's counsel to take necessary steps to serve notice upon the respondents within 3(three) days along with copies of the petition and annexures. Since Mr. N Khan, the learned counsel for respondents is present and accepted notice, no further notice is called for.

List this matter on 21.10.13.

JUDGE

V. Lyndem

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
WP(C)(SH) No. 267 of 2013

13.09.2013

Heard Mr. K Paul, the learned counsel for the petitioner.

Issue notice to the respondents to show cause why this instant petition should not be admitted or any order or orders should not be passed as deemed fit and proper.

Notice is made returnable within 3(three) weeks.

However, the petitioner's counsel to take necessary steps to serve notice upon the respondents within 3(three) days along with copies of the petition and annexures. Since Mr. SC Shyam, the learned senior counsel for Union of India as well as Mr. KS Kynjing, the Advocate General assisted by Mrs. NG Shylla, the learned GA are present and accepted notice, no further notice is called for.

List this matter on 4.10.13.

JUDGE

V. Lyndem

IN THE HIGH COURT OF MEGHALAYA

WP(C)(SH) No. 339 of 2008

Smti. Mirabel A Sangma,
D/o of Late Mohila A Sangma
Resident of Doldegre Village,
West Garo Hills District,
Meghalaya.

..... **Petitioner**

- versus -

1. Garo Hills Autonomous District Council, Tura
Meghalaya
2. The Chief Executive Member,
Garo Hills Autonomous District Council, Tura
Meghalaya.
3. Smti. Pushpa A Sangm,
W/o Shri. Barendro Sangma,
Doldegre Village,
West Garo Hills, Meghalaya.

..... **Respondents**

BEFORE THE HON'BLE MR JUSTICE SR SEN

Advocate for the Petitioner	:	Mr. K Paul
Advocate for the Respondents	:	Mr. S Dey
	:	Ms. SG Momin
Date of Hearing	:	13.09.13
Date of Judgment and Order	:	13.09.13

JUDGMENT AND ORDER (ORAL)

Mr. K Paul, the learned counsel for the petitioner submitted that, in spite of the orders passed by this Court vide Order & Judgment dated 11.07.2001 passed in WP(C) No. 129 of 2000 as well as Order & Judgement dated 10.02.2006 passed in WP(C)(SH) No. 198 of 2003, the CEM, Garo Hills Autonomous District Council, Tura has failed to pass any reasonable order pertaining to the substitution of the Private Respondent No. 3 and also drawn to my attention to the order passed by the learned CEM, Garo Hills Autonomous District Council, Tura dated 26.09.08.

2. The learned counsel further contended that before passing the impugned order dated 26.09.08, the learned CEM, Garo Hills Autonomous District Council, Tura should have considered the provision of law and also should have passed a reasonable order. But from his order it appears that, he has just passed the order whimsically and without giving any reasons, so the said order may be set aside and to be remanded back to the Court of the learned CEM, Garo Hills Autonomous District Council, Tura.

3. Mr. S Dey, the learned counsel appearing for respondents No. 1 & 2 as well as Ms. SG Momin, the learned counsel appearing for respondent No. 3 submitted that, the learned CEM, Garo Hills Autonomous District Council, Tura has rightly passed the order.

4. I have perused the Judgement & Order dated 11.07.01 passed by this Court in WP(C) No. 129 2000 at Para-6 which is reproduced below :

“In that view of that matter, the impugned order dated 29.01.99 is set aside and quashed. The matter is remand back to the Chief Executive Member to consider all the points raised by the petitioner in this case as enumerated above. While considering the above points, the Chief Executive Member is also at liberty to examine the parties or their witnesses and afford them opportunity to prove their case as to whether the respondent No. 3 has any rights to be substituted in place of her mother.”

5. On perusal of the said order, it is clearly understood to me that, this Court has ordered the learned CEM, Garo Hills Autonomous District Council, Tura to consider all the points raised by the petitioner and if necessary to examine the parties and witnesses. Similarly, the Order & Judgement dated 10.02.2006 passed in WP(C)(SH) No. 198 of 2003 also directed to pass necessary and appropriate order after hearing both the parties.

6. After perusal of the order dated 26.09.08 on the conclusion part, I find that the learned CEM, Garo Hills Autonomous District

Council, Tura has passed an order without giving any reason how and under what provision, Smti. Pushpa A Sangma can be substituted. The learned CEM has also noted that the matter is complex in nature, so he is not willing to pass any comments.

7. After further perusal of the order referred to above, I find that the order is a non-speaking one and the learned CEM, Garo Hills Autonomous District Council, Tura has not come to any conclusion as directed by this Court in the 2(two) orders referred above i.e. Judgement & Order dated 11.07.01 and 10.02.2006 passed in WP(C) No. 129 2000 and in WP(C)(SH) No. 198 of 2003 respectively. Hence, I feel that the learned CEM, Garo Hills Autonomous District Council, Tura has failed his duty to comply with the orders passed by this Court.

8. Therefore, I am of the further opinion that the matter needs to be remanded back to the Court of the learned CEM, Garo Hills Autonomous District Council, Tura, accordingly, I do so with the following conditions.

- i) The learned CEM, Garo Hills Autonomous District Council, Tura shall serve notice on both the parties i.e. the petitioner as well as the respondents, thereafter, if necessary to examine the witnesses either in oral or documentary.
- ii) Before passing any order, the learned CEM shall consider the prevailing customary laws under which Smti. Pushpa A Sangma is claiming to be substituted.
- iii) The learned CEM, Garo Hills Autonomous District Council, Tura is further directed that when he passes any order, he must give reasons who can be substituted and for what reasons, if not also, to give reasons.

9. Further, during the pendency of this case before the learned CEM, Garo Hills Autonomous District Council, Tura, he is at liberty to pass any order if he feels necessary to meet the ends of justice.

10. Accordingly, the impugned order dated 26.09.08 is hereby set aside with a direction to disposed of the matter in the light of the points incorporated above within 3(three) months from the date of receipt of the certified copy.

11. Registry is also directed to furnish a copy of this order to Mr. S Dey, the learned counsel for respondents No. 1 & 2 who shall in turn communicate the same to the learned CEM, Garo Hills Autonomous District Council, Tura.

12. With these above observations and directions, the petition is allowed and the matter stands disposed of.

JUDGE

V. Lyndem

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
WP(C)(SH) No. 346 of 2009

13.09.2013

Heard Mr. BK Das, the learned counsel for the petitioner.

Also heard Mr. K Paul the learned counsel for the private respondent as well as Mr. SP Sharma, the learned counsel for respondent No. 1 to 4.

List this matter on 20.09.13.

JUDGE

V. Lyndem