

ORDER SHEET

District : EAST KHASI HILLS
In the Court of : SMT. D.R. KHARBTENG
DEPUTY COMMISSIONER (JUDICIAL), SHILLONG

Bail Application No.152(T)2022
In Sohra PS Case No.17(9)2022

Date of Order of proceeding	ORDER	Signature of Court	Office action taken on order with date and dated signature of Pleaders of parties when necessary
02.11.2022	In view of Notification No. HCM.II. 184/2015-Estt Pt. 114, C.R. put up to me today. Seen the application U/s 439 CrPC filed by Donboklang Nongkynrih for grant of bail to the accused Nikostar Khmah who has been arrested in connection with Sohra PS Case No.17(9)2022. Under Section 379/34 IPC. Ld Counsel for the petitioner Shri. N. Khara submits that the Petitioner had preferred a Bail Application for the accused person namely Shri. Nikostar Khmah before the Court of Judicial Magistrate First Class, at Sohra which was registered as Bail Application No.04/10/2022 and on 14.10.2022 the said Hon'ble Court below was pleased to pass an Order, dated 14.10.2022, thereby rejecting the said Bail Application. Hence, the Petitioner had preferred this instant appeal before this Hon'ble Court for enlarging the accused person on bail. The Ld counsel submits that the Court below had rejected the said Bail Application primarily on 2(two) ground:- 1) The first ground being that the accused person, while in custody for this instant case, on the 10.10.2022, was formally arrested in connection with Mawngap PS Case No.16(7)2022. Thereafter, on the 12.10.2022, the accused person was again formally arrested in connection with Pynursla PS Case No.09(02)2021. The Court below observed that as the accused person was formally arrested in the above mentioned cases, it would appear that the I/O of this instant case would require to investigate into the case with regard to the		

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	involvement of the accused person. 2) The second ground being that, the case is at the initial stage of investigation. Therefore, it is too early to release the accused person on bail since he may hamper the investigation as more stolen bikes are yet to be recovered and there are chances that the evidence collected against the accused may be tampered. The Ld counsel therefore prays for grant of bail to the accused person on the following grounds:- 1) For that the Court below had failed to apply its judicial mind and rejected the said bail application by referring to the other cases where the accused person was formally arrested, i.e., on 10.10.2022, in connection with Pynursla PS Case No.09(02)2021, while he was in custody for this instant case. 2) For the Court has failed to consider the fact that the said cases where the accused was formally arrested on the 10.10.2022 and 12.10.2022, arise out of other respective independent FIRs, registered before different Police Stations and investigation is being carried out by different Investigating Officers. Therefore, the investigation of all three cases are being done independently by each I/O assigned for each particular case. 3) For that the Court has failed to appreciate the fact that the I/O's of the other two cases being Mawngap PS Case No.16(7)2022 and Pynursla PS Case No.09(02)2021, while praying and seeking permission of the Court below to formally arrest the accused person, did not mention of any connection between the three cases, but had simply stated the fact of the case and prayed that the I/O may be		
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allowed to formally arrest the accused person.

- 4) For the Court had completely ignored the fact that the accused person was remanded to a total of 5 (five) days Police Custody and in those 5 (five) days period, the I/O had thoroughly investigated and interrogated the accused person in relation to this instant case and thereafter, the I/O did not pray for any further Police custody but had prayed that the accused person be remanded to 14 (fourteen) days Judicial Custody. This shows and implies that the I/O no longer required the accused person for the purpose of investigation and the I/O was satisfied with his investigation and interrogation of the accused person in those 5 (Five) days period of Police Custody.
- 5) For the Court below had failed to consider the fact that the case is no longer at its initial stage of investigation, as the I/O has been given ample opportunity and has been given a free hand to conduct the investigation by granting a total of 5(five) days Police Custody of the accused person and more importantly as has been observed by the court below in its Order dated 14.10.2022, that the stolen Two Wheelers in connection with this instant case has already been recovered by the I/O.
- 6) For that the Court below has erred in rejecting the bail application by speculating that the I/O of this case being Sohra PS Case No.17(9)2022, would require to investigate the involvement of the accused person in the other two cases where he was formally arrested. Mention may be made herein that, the I/O's of the other two cases, i.e., Mawngap PS Case No.16(7)2022 and Pynursla PS Case No.09(02)2021, had sought permission to formally arrest the accused

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person for the purpose of investigation into their respective cases and his involvement in those specific respective cases. The respective I/O carried the investigation of each cases based on the FIRs being filed in their respective Police Station by different Complaints altogether.

- 7) For the Court below has failed to consider the fact that the accused person is a young boy who is only a daily wage labourer and therefore, is in no position to hamper or tamper with the investigation in any manner whatsoever.

Ld counsel for the Prosecution Smti. R. Sver objected to the grant of bail on the ground that the accused is a habitual offender and there are many cases registered against him.

No doubt it is a matter of record that the accused as been in custody for almost 45 (forty five) days. However, this court deems it proper to call for the case record from the PI. PI is directed to produce the case record of Sohra PS Case No.17(9)2022 on 03.11.2022.

Fix 03.11.2022 for hearing.