

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 7 of 2020

Date of Decision: 31.08.2020

Smti Ibemcha Sharma & 2 Ors. Vs. State of Meghalaya.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioners	:	Ms. L. Khiangte, Adv. Mr. Th. Rakesh Singh, Adv.
For the Respondent(s)	:	Mr. S. Sengupta, Addl. P.P.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

1. In this bail application there are three petitioners viz; Smti Ibemcha Sharma, wife of Shri Joy Sharma (accused), Smti Sharmila Sharma, wife of Shri Indramohan Sharma (accused) and Smti Radika Sharma, wife of Shri Rajesh Sharma (accused).

2. From the averments made in the application, what can be understood is that on 28.02.2020, an FIR was filed by the President and Secretary KSU of South Khasi Hills District Unit in connection with an incident of rioting which took place on 28.02.2020 at Ichamati under Shella P.S, East Khasi Hills District in which one person was seriously assaulted and later succumbed to his injuries leading to the arrest of some suspects, including the accused persons above named, who are the husbands of the respective petitioners herein in the registered criminal case being Shella P.S case No 9

(2) 2020 under Sections 148/326/506/307/34 IPC read with Section 3 of the PDPP Act.

3. Ms. L. Khiangte, learned counsel for the petitioners submits that the above named accused persons are innocent and that on the day of the occurrence, they were informed by the school authorities that a riot took place near the school and as such, they are to come and pick up their children from the school. Accordingly, they went and picked up their children and remained at home being frightened of the riot as some of their neighbor's houses was set on fire.

4. However, in the wee hours of 29th February 2020, the police came to their residence and arrested them and thereafter they were taken to the Tura District Jail, where they are in custody for more than five months till date.

5. The learned counsel for the petitioners has further submitted that on 24.05.2020, the Investigating Officer had filed the charge sheet in the case and of the above named accused, Shri Rajesh Sharma was charged for offences under Sections 148/506 IPC, Shri Joy Sharma and Shri Indramohan Sharma were charged for offences under section 148/506/427 IPC. Copy of the charge sheet was served upon the accused and from the materials contained therein, there is no evidence whatsoever against the accused and even the witnesses examined by the I/O has not stated that they saw the three accused above named asserted the learned counsel.

6. Again it is submitted that the accused being permanent resident of Shella, they are not likely to abscond and there is no possibility of tampering with the evidence as the case has been charge sheeted and as such, if enlarged on bail, they undertake to abide by any conditions to be imposed by this Court.

7. Mr. S. Sengupta, learned Addl. P.P for the State respondent, in his submission before this Court has contended that from the charge sheet it is

seen that a prima facie case is made out against the accused persons for which bail has been applied for and in view of the incriminating evidence against them, this application is devoid of merits and the same is liable to be rejected.

8. I have considered the submission of the learned counsels for the parties and I have also perused the status report, the case diary including the charge sheet No. 03/2020 dated 24.05.2020 wherein it is seen that of all the accused persons charge sheeted in the case, it has been noted that a prima facie case under Section 148/506/427 IPC was found well established against the accused persons Joy Sharma and Indramohan Sharma, while the accused person Rajesh Sharma is charged under Section 148/506 IPC.

9. Since the charge sheet has already been filed therefore, the process of investigation has already been completed. An observation of the Sections charged against the accused persons whose bail application is under consideration herein would show that two of the Sections i.e. Section 148 and 427 IPC are bailable sections. Section 506 IPC is also a bailable Section, however it has been submitted that in the state of Meghalaya, Section 506 IPC is made non-bailable.

10. It is well settled that while considering an application for bail certain factors has to be considered including the seriousness of the offence and the quantum of punishment if convicted.

11. In the case of ***Sanjay Chandra v. CBI: (2012) 1 SCC 40*** at paragraph 21, the Hon'ble Supreme Court has observed that: -

“21. In bail application, 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.”

12. In the case of ***Dipak Subhashchandra Mehta v. CBI: (2012) 4 SCC 134*** at paragraph 32, the Hon’ble Supreme Court has held that: -

“32. 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 merits 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. The court granting bail has to consider, among other circumstances, the factors such as (a) the nature of accusation and 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; and (c) prima facie satisfaction of the court in support of the charge. In addition to the same, the court while considering a petition for grant of bail in a non-bailable offence, apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted.”

13. As observed above, the severity of punishment likely to be meted out to the accused persons above named, would be within the range of two to three years and the second part of Section 506 IPC if proved, then the punishment may extend to 7(seven) years. However, the nature of the evidence and witnesses is not required to be discussed or looked into by this Court at the stage of consideration of bail.

14. On an overall appreciation of the materials on record as well as the submissions of the parties, this Court is inclined to allow the applications of the petitioners for grant of bail to the accused persons above named provided the following conditions are abided: -

- i. That the accused persons shall not abscond or tamper with the evidence and witnesses.
- ii. That they shall diligently appear in Court as and when required.
- iii. That they shall not leave the jurisdiction of India without prior

permission from the Court concerned.

15. The accused persons are also directed to execute a personal bond of ₹50,000/- (Rupees fifty thousand) each with two sureties for each of the accused persons of like amount to the satisfaction of the Trial Court.

16. The learned Trial Court is hereby directed to issue notice of release of the accused persons above named on being satisfied with the bail bonds etc., produced before it.

17. The case diary, charge sheet and relevant documents produced by the State respondent is directed to be returned accordingly.

18. Registry is directed to send copy of this order to the Trial Court for compliance.

19. With the above, the application is hereby disposed of as allowed. No cost.



Judge

Meghalaya
31.08.2020
"N. Swer, Stenographer"