

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 9 of 2020

Date of Decision: 25.09.2020

Smti. Rani Dey

Vs.

State of Meghalaya

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K. Ch. Gautam, Adv.
For the Respondent(s) : Mr. K. Khan, P.P. with
Mr. A.H. Kharwanlang, GA.

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

1. This matter has been taken up today via video conferencing.
2. The petitioner has come before this Court with an application under Section 439 Cr.P.C. seeking grant of bail on behalf of her brother Shri. Shiba Dey who was arrested in connection with G.R. Case No. 8(6) of 2020 u/s 148/326/506/307/302/34 IPC r/w section 3 of the PDPP Act arising out of Shella P.S case No. 9(2) 2020 u/s 148/506/302/34 IPC r/w section 3 of the PDPP Act
3. A brief factual observation of the events leading to the registration of the said Shella P.S case No. 9(2) 2020 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.

4. In this connection, the police have made a number of arrests of which the accused Shri. Shiba Dey is one of them. In course of investigation, the Investigating Officer have found that a prima facie case have been made out against him under Sections 148/506/302 IPC.

5. The learned counsel for the petitioner, Mr. K. Ch. Gautam in his argument has submitted that the accused person Shiba Dey was arrested on 31.03.2020 and the Charge Sheet has been filed within the mandatory period. However, the accused has been languishing in jail since the date of his arrest and on perusal of the Charge Sheet, it is seen that there is no evidence against the accused person and even if the Charge Sheet speaks about some photographs and electronic evidence, the same has not been supplied to the accused person according to the provision of Section 3 of the Indian Evidence Act.

6. Another limb of argument advanced by the learned counsel for the petitioner is that since the Charge Sheet has been filed, there is no possibility of speedy trial. The case being that of a riot, a number of people have been arrested, infact about 29 persons have been arrested by the police in view of the law and order situation, they were taken to Tura and are in custody till date.

7. Learned counsel for the petitioner has also submitted that the petitioner is moving this application on the ground that an earlier application was refused by the Lower Court on the ground that if these people were released on bail, it might lead to a law and order situation which is not a very ground for refusal of bail.

8. As far as the Charge Sheet is concerned, the learned counsel has submitted that until and unless there is concrete evidence which may warrant conviction of the accused, refusal of bail may amount to punitive action.

9. The case of *Sanjay Chandra v. Central Bureau of Investigation: (2012) 1 SCC 40* at paragraphs 21 and 22 was cited by the learned counsel for

the petitioner to support his contention as it was finally submitted that since the case is already charge sheeted, the investigation is already over, there is no scope of hampering and tampering with the evidence and the accused will not abscond, but will provide sufficient sureties, if enlarged on bail.

10. Mr. K. Khan, learned Public Prosecutor assisted by Mr. A.H. Kharwanlang, learned GA on behalf of the State respondent has initiated his argument by leading this Court to the Order dated 31.08.2020 passed in B.A. No. 7 of 2020 which the learned P.P asserted that in that case, although the FIR is common, the difference is that the Sections involved against the accused therein carries a punishment of less than seven years, which was the basis of this Court granting bail to the accused. However, in this instant case, the Section involved is 302 IPC which is a very serious offence of murder and in such a situation, the charge sheet having been filed, a prima facie case having been made out against the accused, this Court has to strike a delicate balance of public interest and individual liberty.

11. The learned P.P has also submitted that the stage of the case is that copies have been supplied to the accused and the committal process is on and therefore, at this juncture, consideration of bail is too premature and the accused could have waited till the stage of framing of charges, for if that process take some time, perhaps his prayer for bail may be considered.

12. In reply, the learned counsel for the petitioner has submitted that saying that there is a prima facie case under Section 302 IPC is not enough, since in a case which has been charge sheeted, the case is basically on merit. The prosecution has to show that there is concrete evidence that will satisfy this Court that enlarging the accused on bail will not be in public interest.

13. Having heard the submission and contention of the learned counsels for the parties and on perusal of the case record and the case diary which was produced before this Court on call, what can be understood is that the petitioner have approached this Court on behalf of the accused Shiba Dey who

is presently lodged in judicial custody in connection with the aforementioned Shella P.S case No. 9(2)2020.

14. As noticed above, the case has been charge sheeted and the matter is seisin by the learned Judicial Magistrate First Class, Sohra in G.R. Case No. 8(6) of 2020. The stage of the case is for supply of copies and appearance. The same has not yet been committed to the Sessions Court since certain Sessions triable sections of law are involved.

15. Be that as it may, this Court is called upon to decide the issue of bail as to whether the accused Shiba Dey is entitled to the same or not.

16. As far as the issue of grant or refusal of bail is concerned, a number of judgments have been passed by the Apex Court as well as by the High Courts of our Country in which the basic principles on bail jurisprudence has been laid down. Suffice it to say that it is well settled that while considering an application for bail, the facts and circumstances of an individual case would determine the outcome thereof.

17. No doubt when an application under Section 439 Cr.P.C has been pressed before the High Court, wide discretionary powers has been conferred on the High Court and there is no ban imposed under the said Section against granting of bail by the High Court to persons accused of an offence punishable with death or imprisonment for life. This discretionary power however, cannot be exercised without due application of mind and in this regard, a number of guiding principles have been laid down by the Courts from time to time.

18. In an application for bail, the Court has to take a decision by considering inter alia the following factors: -

- i. Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence.
- ii. Nature and gravity of the charge.
- iii. Severity of the punishment in the event of conviction.
- iv. Danger of the accused absconding or fleeing, if released on

bail.

19. In the context of this instant case, it would be profitable to refer to the case of *State of Maharashtra v. Sitaram Popat Vetal and Anr: (2004) 7 SCC 521* wherein at paragraph 8 of the same, the Apex Court has held as under:-

“8. Though a conclusive finding in regard to the points urged by the parties is not expected of the court considering the bail application, yet giving reasons is different from discussing merits or demerits. As noted above, at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. But that does not mean that while granting bail some reasons for prima facie concluding why bail was being granted is not required to be indicated”.

20. In the case of *Sanjay Chandra (supra)*, relied upon by the learned counsel for the petitioner, the Apex Court spoke about the object of bail in the context of securing the appearance of the accused person at the trial. However, the Apex Court has also held that from time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial. The Apex Court has further held that it is quite contrary to the concept of personal liberty enshrined in the Constitution that a person who has not been convicted be deprived of his liberty only on the belief that he will tamper with the witnesses, if left at liberty. However, it is also well settled that public safety would overpower personal liberty in a given set of situation.

21. In the context of the above, the application of the prima facie test vis-à-vis the evidence available on record which would incriminate the accused person herein, this Court would consider it fit and proper to examine materials on record.

22. Without elaborating much in the contents of the evidence available, what can be seen is that there are sufficient evidence backed by credible witnesses, infact the petitioner herein being one of them to come to a

conclusion that the accused Shiba Dey had played a vital role in the sequence of events leading to the assault and death of one of the member of the KSU.

23. This being the case, I am convinced that the petitioner has not been able to make out a case for grant of bail at this juncture.

24. It is made clear that the observations expressed above is in the context of the application for bail and should not in any way be the point of consideration for any of the parties in course of trial, for which the trial would be at liberty to come to its own findings and conclusions on the basis of the evidence and materials on record.

25. This application is hereby rejected as devoid of merits.

26. Registry to send back the records.

Judge

Meghalaya
25.09.2020
"D. Nary, PS"

