

Serial No. 03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 11 of 2020 with
B.A. No 12 of 2020

Date of Decision: 25.09.2020

Smti. Biva Baidya & Anr.	Vs.	State of Meghalaya.
Smti. Milan Das	Vs.	State of Meghalaya.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Mr. TH. Rakesh Singh, Adv.
For the Respondent(s)	:	Mr. B. Bhattacharjee, AAG. with Ms. Z.E. Nongkynrih, GA.

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 petitioners in BA. No. 11 of 2020 the wives of Shri Kanai Baidya and Shri Sajal Das respectively have approached this Court with a common application under Section 439 Cr. P.C. with a prayer for grant of bail on behalf of their respective husbands who were arrested on 29.02.2020 by the Shella Police in connection with Shella P.S Case No. 9(2) 2020 u/s 148/326/506/307/302/34 IPC r/w section 3 PDPP Act.
3. The petitioner in BA. No. 12 of 2020 is the wife of another accused person, Shri Sushan Das who was also arrested in connection with the said Shella P.S case No 9(2) 2020.
4. Being similar in nature and arising out of the same case, this Court

deems it convenient and expedient to take up these two bail applications and to dispose them vide this common order.

5. The reason for the arrest of the accused persons above named was as a consequent of an incident which occurred on 28.02.2020 at Ichamati under Shella Police Station when, after a meeting organized by an NGOs, Viz; the KSU, at about 4.30 PM or so, a group of people armed with sticks, machete, iron rods etc. suddenly came and attacked the members of the KSU as a result of which many of them were injured and one person eventually succumbed to his injuries.

6. In this connection, an FIR was lodged on 28.02.2020 by the President and Secretary KSU, South Khasi Hills Unit upon which the said Shella P.S case No. 9(2) 2020 was registered and on 29.02.2020 a number of suspects were arrested, including the husbands of the two petitioners herein.

7. It may be mentioned that after investigation was launched, the I/O carried on the process of investigation and in due course filed the Charge Sheet dated 24.05.2020 before the Court of the learned Judicial Magistrate First Class(JMFC), Sohra, East Khasi Hills District and a case being G.R. Case No. 8(6) 2020 was registered. The case is reportedly at the stage of appearance of some accused and supply of copies to some of them.

8. Heard Mr. TH. Rakesh Singh, learned counsel for the petitioners who at the outset has led this Court to the Order dated 31.08.2020 passed in BA. No. 7 of 2020, where in a similarly situated case, the accused persons therein were granted bail with conditions.

9. Learned counsel for the petitioners has also referred to the order of the learned Judicial Magistrate First Class, Sohra who, on an application for bail on behalf of the accused persons above named, had rejected the same mainly on the ground that the rule of parity does not apply as the Court will have to consider each and every bail application on its own merits and secondly, that if released on bail, the accused persons may abscond and flee to Bangladesh.

10. The learned counsel has further submitted that the severity of the punishment vis-s vis the nature and gravity of the offence alleged against the accused persons has also to be considered, inasmuch as, the offence charged against accused Sajal Das is under Section 148/427/506 IPC while the charges against accused Kanai Baidya and Sushan Das is under Section 148/506 IPC. Therefore, the prescribed penalty in the event of conviction would be only three years and Sections 148 and 427 IPC are bailable sections and triable by a Magistrate First Class, including 506 IPC which is made non-bailable only in the State of Meghalaya. Even in this case, Mr. Singh has submitted that the I/O in his Charge Sheet has not mentioned as to whether part one of part two of Section 506 IPC is involved as the nature of punishment will vary accordingly.

11. On the question of the accused absconding, Mr. Singh has submitted that all the accused persons are permanent residents of Meghalaya and are occupied with their professions at Shella, for which they also have valid residential documents and as such, there is no question of them fleeing to Bangladesh.

12. Mr. Singh has also raised the issue of parity by pointing out that this Court vide the relevant Order dated 31.08.2020 in BA. No. 7 of 2020 has enlarged on bail three co-accused persons who are involved in this same case and the facts and circumstances including the offences charged against them being identical, therefore the rule of parity would be applicable in such a situation, though it is admitted that parity is not the governing or deciding factor. The case of *Sanghian Pandian Rajkumar v. Central Bureau of Investigation & Anr: (2014)12 SCC 23* was referred by the learned counsel for the petitioners to support his case.

13. It is finally submitted that if the accused persons are not given bail, their personal liberty would be deprived which would affect their Fundamental Rights and also their human rights.

14. Mr. B. Bhattacharjee, learned AAG assisted by Ms. Z.E. Nongkynrih, learned GA on behalf of the State respondent while opposing the submission of the learned counsel for the petitioners have submitted that basically, only two issues are to be considered here, that is, with regard to parity and the other is with regard to the severity of the charges against the accused persons herein named.

15. As to parity, the learned AAG has submitted that just because some accused persons have been granted bail in similar or identical section of law charged against them, would not entailed or presumed to be entitled to other accused persons similarly situated as the role of each accused has to be examined as far as their complicity in the case is concerned. To support this contention, the case of *Neeru Yadav v. State of Uttar Pradesh & Anr: (2014) 16 SCC 508* at paragraphs 2, 9, 13, 15 & 17 was referred to support this contention.

16. On the issue of severity of the charges, the learned AAG has submitted that under Section 216 Cr. P.C, the Trial Court can alter the charges depending on the evidence adduced to determine the exact role played by each accused and at this stage, it cannot be said as to who has played a less heinous role and who has played a more grave role and as such, even the role played by the accused persons mentioned above would be subject to evidence and to grant them bail merely on the sections on which they are charged would not be proper. It is finally submitted that the accused persons are not entitled to bail and these related applications may be rejected.

17. In reply learned counsel for the petitioners has submitted that since the learned AAG has raised the provision of Section 216 Cr. P.C which speaks of alteration and addition of charges, there is also a provision where the accused persons may be discharged before commencement of trial and as such, to raise this ground at the stage of consideration of bail is not relevant as this Court does not have to examine the detailed evidence to do so.

18. On consideration of the submission made before this Court what can be understood is that, the petitioners have approached this Court seeking for grant of bail on behalf of the three accused persons above named seeking application of the doctrine of parity, inasmuch as, some of the co-accused connected to the same case have already been enlarged on bail by this Court in BA. No. 7 of 2020 vide Order dated 31.08.2020.

19. The State respondent has opposed this contention on the ground that the role and involvement of each individual accused person as far as the incident which occurred on 28.02.2020 at Ichamati is concerned has to be examined in the larger context of the complicity of each accused person.

20. It may be mentioned that this Court while passing the Order dated 31.08.2020 in BA. No. 7 of 2020, after an overall consideration of the case in hand, has mainly allowed the application for grant of bail taking into account the severity of the ultimate punishment if conviction follows the trial.

21. However, since the contention of involvement of the accused persons in this case has been raised vis-à-vis the involvement of the accused persons in BA. No. 7 of 2020, a scrutiny of the record and case diary would be profitable to make a comparative assessment.

22. On going through the records and case diary, it is seen that the Investigating Officer has examined a large number of witnesses and has also recorded the statement of the arrested accused persons under Section 161 Cr.P.C. Almost all the witnesses have confirmed that the riot had taken place at Ichamati. Some of these witnesses are eyewitnesses who has seen a large mob armed with sticks and dangerous weapons advancing towards the place where the meeting of the KSU had taken place and thereafter, there was a scuffle between the two groups. Again, the witnesses have also identified some of the rioters which includes the names of those accused persons named in the said BA. No. 7 of 2020 and also those accused persons for whom these bail applications have been preferred. However, none of the witnesses have

pinpointed the exact role of each individual rioter.

23. As to the contention on parity, the learned AAG has asserted that parity cannot be applied in this case. In the case of *Neeru Yadav (supra)* relied upon by the learned AAG, the principle of parity was not made applicable in that case on the ground that the antecedent of the accused person was not considered by the High Court while applying the principle of parity. However, as regard the accused persons mentioned above, apart from the fact that they might have taken part in the said riot, there is no mention of their antecedent, let alone of being criminal in nature. Therefore, the case relied upon by the State respondent has no relevance to the facts and circumstances of the case under consideration.

24. In the case of *Sanghian Pandian Rajkumar (supra)* cited by the learned counsel for the petitioners, the Hon'ble Supreme Court on an overall consideration of the matter at paragraph 23 of the same has held as follows:

“23. In the light of the details, allegations in the charge-sheet filed before the court, many of the co-accused were granted bail by the trial court/High Court and this Court and of the fact that both the appellants are in custody for nearly 7 years pending trial and also in view of the fact that it would not be possible for the Special Court to conclude the trial within a reasonable period as claimed by the learned ASG, we are inclined to consider their claim for bail”

25. What can be seen here is that the Hon'ble Supreme Court has considered the matter both on the issue of parity as well as on the fact that the accused/appellants therein have been in custody for 7 years with the possibility of early disposal of the case not in sight. In this case, even though the accused persons have not been in custody for a long time, the fact that similarly situated accused persons have been granted bail would mean that the principle of parity would apply to them.

26. In view of the above, this Court is of the considered opinion that the accused persons above named are entitled to bail, which is hereby granted under the following conditions:

- 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.

27. 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.

28. 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.

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

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

31. With the above, these applications are hereby disposed of as allowed.
No cost.

Judge

Meghalaya
25.09.2020
"D. Nary, PS"