

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 3 of 2021

Date of Decision: 25.06.2021

Smti. Kona Hajong & 9 Ors. Vs. State of Meghalaya.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. Th. Rakesh Singh, Adv.
Ms. L. Khiangte, Adv.
For the Respondent(s) : Mr. B. Bhattacharjee, AAG. with
Mr. A.H. Kharwanlang, GA.
Mr. S. Sengupta, Addl. Sr. GA.

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

ii) Whether approved for publication in press: Yes/No

1. Matter taken up today via video conferencing.

2. The Petitioners have approached this Court with a common application under Section 439 Cr.P.C. with a prayer for grant of bail on behalf of the accused persons 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 accused persons, represented by the respective Petitioners were arrested in connection with 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.

4. 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.

5. In due course, the I/O filed his charge sheet and the matter was placed before the learned Judicial Magistrate First Class (JMFC), Sohra being registered as G.R. Case No. 8(6) of 2020 u/s 148/506/302/34 IPC r/w section 3 of the PDPP Act. The case is at the stage of committal to the Sessions Court.

6. Heard Mr. Th. Rakesh Singh, learned counsel for the Petitioners who has submitted that in this instant application, there are 11(eleven) accused persons who have moved this Court through their respective representatives seeking grant of regular bail under Section 439 Cr.P.C.

7. The learned counsel has then narrated the facts of the case, which is not required to be repeated as the same have been briefly narrated above and has submitted that there are about 70(seventy) accused persons in the case, most of whom have been enlarged on bail, except the accused persons represented herein.

8. The learned counsel has also submitted that admittedly a riot had taken place on the 28.02.2020 at Ichamati and the accused persons herein have never participated in the said riot, but had gone to the place of occurrence on being curious, however they were arrested by the police in connection with the said incident.

9. It is further submitted that the accused persons were arrested in the month of May 2020 and are still in judicial custody at the Tura District Jail for more than one year now which is a violation of their personal liberty, notwithstanding the fact that the charge sheet in the case have already been filed and there is no apprehension of tampering with the evidence, the stage of investigation apparently being over.

10. It is further submitted that most of the accused have been enlarged on bail and as such, bail cannot be denied to the accused persons herein who will have to face trial and until the charges are proved beyond reasonable doubt, the presumption of innocence is in favour of the accused persons.

11. The fact that the accused persons have moved the Court of the Judicial Magistrate First Class, Sohra and the Deputy Commissioner (Judicial), Shillong respectively for grant of bail, which was rejected was also brought to the notice of this Court by the learned counsel.

12. Further submitting that the accused persons are mostly daily wage labourers and are permanent residents of Ichamati village with no criminal records, prayer for grant of bail is made with the undertaking that they will abide with any conditions imposed by this Court.

13. In support of his case, the learned counsel has cited the case of ***Sanjay Chandra v. CBI: (2012) 1 SCC 40*** at paragraphs 14, 15, 16, 20, 21, 26 & 28 and also the case of ***Sanghain Pandian Rajkumar v. CBI & Anr: (2014) 12 SCC 23*** at paragraph 22.

14. The next limb of argument of the learned counsel is on the issue of changed circumstances. It is however submitted that the law is very clear that there can be as many successive bail applications filed to secure bail for an accused person inspite of earlier bail applications being rejected by the Hon'ble Supreme Court, High Courts or Trial Courts. In this regard, the learned counsel has relied on the case of ***Kalyan Chandra Sarkar v. Rajesh Ranjan: (2005) 2 SCC 52*** at paragraphs 18, 39, 40 and 42 and has submitted that in the said case, the Apex Court has held that a person whose application for enlargement on bail is once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing requires that such persons be released on bail, inspite of his earlier applications being rejected, the Courts can do so. In the same case, it was further held that “*While deciding the cases on facts, more so*

in criminal cases the court should bear in mind that each case must rest on its own facts and the similarity of facts in one case cannot be used to bear in mind the conclusion of facts in one case....”

In this context, the learned counsel for the Petitioners has submitted that six of the accused persons who has come before this Court in this application have earlier approached this Court for grant of bail which was rejected vide order dated 25.09.2020. Again, the prayer for grant of bail of three other accused persons have been rejected by this Court vide order dated 01.12.2020. According to the learned counsel, the fact that there has been a long passage of time of about nine months or so, since the earlier bail applications were rejected qualifies for change of circumstances to enable the petitioners to move this instant bail application before this Court.

The fact that the earlier bail application which was rejected vide order dated 01.12.2020 was on the ground of the same being too premature at that point of time and also that the case is shortly to be committed to the Court of the Sessions Judge, which is not the situation at present since the case has not yet been committed to the Sessions Court, therefore this change of circumstances is also one of the ground relied upon by the petitioners for grant of bail.

15. Yet another ground of argument raised by the learned counsel for the Petitioners is on the principle of parity. In this regard, it is submitted that one of the accused person, Shri Samir Das who was charged with identical offences as the accused persons in this instant application was enlarged on bail by the learned JMFC, Sohra vide order dated 05.04.2021 when the non-bailable warrant of arrest issued against him was recalled by the learned Magistrate and as such, being similarly situated and placed, the accused persons herein may also be released on bail on the ground of parity.

16. Per contra, Mr. B. Bhattacharjee, learned AAG while opposing this instant application has submitted that from the submission of the learned counsel for the Petitioners, it is understood that the main thrust upon which the prayer for grant of bail is made is on the basis of change of circumstances,

primarily because of the fact that since the last order of rejection of bail by this Court to the accused persons herein which was about six to nine months, therefore the accused persons are entitled to bail. However, the learned AAG has submitted that this is not the correct proposition of law. In fact, in the case of **Kalyan Chandra Sarkar** (*supra*) relied upon by the learned counsel for the Petitioner, the Hon'ble Supreme Court has made it clear that change of circumstances would be on the ground that there is a change in the fact situation or in law or where the earlier finding has become obsolete which was not a ground raised by the petitioners herein and was also not argued by the learned counsel for the Petitioners, inasmuch as, change in fact situation or law has not been made out.

17. As to the contention that the accused persons herein have been in detention for a prolonged period of time for which they are entitled to bail, the learned AAG has cited the case of **State of U.P. v. Amarmani Tripathi: (2005) 8 SCC 21** and has submitted that at paragraph 19 of the same, the Hon'ble Supreme Court has held that *"In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to be enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."*

18. The next submission of the learned AAG is that the fact that the case has taken considerable time to proceed cannot be attributed to the prosecution, inasmuch as, the case is still at the stage of commitment to the Court of Sessions which is a process of the court for which the prosecution cannot be faulted. The case of **Gobarbhai Naranbhai Singala v. State of Gujarat: (2008) 3 SCC 775** at paragraph 21 was cited in this regard, where the Hon'ble Supreme Court noting the progress of the case before the Trial Court has come to the conclusion that the complainant party was in no way responsible for any

delay in trial.

19. Having heard the learned counsels, this Court has given due consideration to the contention and submissions of the parties. In this particular instance, this Court is of the considered view that the main issue to decide as to whether the application can be allowed or not, is the issue of 'change of circumstances', which was argued at length by the learned counsels for both sides.

20. The learned counsel for the Petitioners have contended that the change of circumstances is based mainly on the fact that since the time when the last bail application of the accused persons herein was taken up and rejected, about six to nine months have passed by which time there have many changes in the circumstances of this case which would entitle the accused persons to be enlarged on bail.

21. Another contention of the learned counsel for the Petitioners is that the accused persons are entitled to bail on the ground of parity since one of the co-accused charged with identical offences have been enlarged on bail vide order dated 05.04.2021 passed by the learned JMFC, Sohra.

22. The learned AAG in counter to his argument has submitted that the fact that the accused persons are in detention for a considerable period of time, that would not give them the benefit of being enlarged on bail on this ground. The case of *Amarmani Tripathi* (*supra*) at paragraph 19 of the same was cited in this connection.

23. On the contention that the accused persons are entitled to bail on the ground of parity, the learned AAG has submitted that the circumstances on which bail was allowed to the said accused person Shri Samir Das was on the ground that the NBWA issued against him was recalled. In this case, the said accused person was never in custody, but for his absence from proceedings of the Court, while in the case of the accused persons herein, they are already in custody, and as such, there can be no ground on the basis of parity since the

situation is not the same.

24. Being aware of the authority cited by the learned AAG on the issue of change of circumstances, this Court would reiterate that for seeking the benefit of change of circumstances for the purpose of grant of bail after earlier bail applications have been rejected, the accused persons has to bring to the notice of this Court that the fact situation have changed, or that the law in this regard have also changed, or where the earlier finding has become obsolete. In all three instances, except for the fact that the ground of delay was taken by the accused person, change of fact situation or law or that the earlier order has become obsolete has not been made out in this instant case.

25. This Court being fully conscious of the concept of personal liberty which is a constitutional guarantee to every Indian citizen under Article 21 is also aware that the same can be curtailed in accordance with due procedure established by law and in this instant case, the accused persons have not been able to derail the due process of law as cited above which goes against them vis-à-vis their personal liberty.

26. Under the facts and circumstances of this case, this Court is constraint to reject the application of the Petitioners at this juncture. It goes without saying that in the event, there is a change of circumstances, the accused persons are entitled to approach this Court or the Trial Court with similar prayer.

27. In view of the above, this application is hereby rejected and disposed of as devoid of merit. No cost.

28. Registry is directed to send back the Lower Court case record.

Judge

Meghalaya
25.06.2021
"D. Nary, PS"