

**Serial No. 03**  
**Regular List**

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

BA No. 12 of 2022

Date of Decision: 30.09.2022

LK Gracy

Vs.

State of Meghalaya

**Coram:**

**Hon'ble Mr. Justice W. Diengdoh, Judge**

**Appearance:**

For the Petitioner/Appellant(s) : Mr. A. M. Bora, Sr. Adv. with  
Mr. D. K. Baidya, Adv.  
Mr. M. Prasad, Adv.

For the Respondent(s) : Mr. N. D. Chullai, AAG with  
Mr. S. Sengupta, Addl. PP  
Ms. R. Colney, GA

**ORDER**

1. Heard Mr. A. M. Bora, learned Sr. counsel along with Mr. D. K. Baidya, learned counsel who has submitted that the petitioner herein is the wife of the accused Bernard N. Marak, who was arrested in connection with Tura Women PS Case No. 105(07) 2022 under Section 3/4/5/6/7 of the Immoral Traffic (Prevention) Act, read with Section 370(3) IPC and was also shown arrested in another case being Tura PS Case No. 166(07) 2022 under Section 120/120(B)/121/121(A)/109/110 IPC read with Section 4/5 E.S. Act on the

basis of an FIR lodged by WPSI T. C. Marak before the Officer-in-Charge, Tura Police Station, West Garo Hills District.

2. The complainant has stated that she was deputed by the OC, Tura Women PS on 28.07.2022 to accompany the minor girl and also the minor boys to Rimpu Bagan, the place of occurrence (PO) connected with Tura Women P.S. Case No 105(07) of 2022 under section 3/4/5/6//7 Immoral Traffic (Prevention) Act in order to collect their belongings from the said place.

3. The said complainant was also accompanied by the Superintendent of Children Home Girls, Tura as well as the Superintendent of Children Home Boys, Tura and some staff of the said Children Home. Three other independent witnesses were also requested to accompany them to the PO.

4. The report went on to say that on reaching the PO, the minor girl as well as the minor boys took them to their rooms to collect their personal belongings and on completion of the formalities, the group proceeded to exit from the PO. However, on the way out on the stairs, they noticed one small hidden room at the corner. On checking the room in the presence of witnesses, they discovered some articles namely; (1) 4(four) nos. of crossbow (2) 15(fifteen) nos. of Crossbow arrow (3) 35(thirty-five) nos. of Neogel 90 explosives and (4) 100(one hundred) nos. of detonators. The said articles were seized.

5. On receipt of the said FIR, as stated above, a case was registered as Tura PS Case No. 166(07) 2022 under Section 120/120(B)/121/121(A)/109/110 IPC read with Section 4/5 E.S. Act.

6. The learned Sr. counsel has submitted that from the records of Tura Women PS Case No. 105(07) of 2022, it appears that the police or rather the I/O has made a thorough search of the PO and has made a number of seizures including bottles containing liquor and a number of condoms etc. However, at that point of time, that is, from 22.07.2022 to 28.07.2022, no explosive substances/articles were recovered, therefore an inference can be made that during the intervening period some persons may have planted the said incriminating articles. It may be mentioned that the accused, husband of the petitioner was in custody during this period, he was never taken to the PO nor was recourse taken under section 27 of the Evidence Act to pin the accused person to the alleged recovery of the said articles.

7. It was further submitted that there are no materials to show that the accused person has entered into a criminal conspiracy with the other accused persons, particularly the caretakers or any other person. The mere fact that the said articles were found and seized from the premises of the property of the accused person without indicating as to what is the purpose of use of the said articles cannot, *prima facie*, attract the offences of Section 109/110/120 and 120B IPC. As regard the alleged offence committed under Section 121/121A IPC, the learned Sr. counsel has submitted that from the narrative in the FIR,

it cannot be remotely inferred that there are any incriminating materials against the accused person.

8. The learned Sr. counsel has also referred to an order passed by the learned Sessions Judge, West Garo Hills, Tura who while disposing of a bail application preferred by the petitioner herein on behalf of the accused person, Bernard N. Marak had vide order dated 08.09.2022 *inter alia*, had observed that from a perusal of the FIR there is no material that the accused person has committed an offence under Section 120/120B/121/121A/109 IPC as well as one under section 4 of the Explosive Substances Act, 1908. However, the learned Sessions Judge did opine that there is *prima facie* material to believe that the accused person has committed an offence under Section 5 of the said E.S. Act, 1908. It is submitted that the observations as far as Section 5 of the E.S. Act, is concerned is not correct as the accused person has absolutely no knowledge about what is going on in his property since he has clearly stated that the same was under the full control of his caretakers.

9. Mr. N. D. Chullai, learned AAG while strongly opposing the prayer of the petitioner has submitted that whatever investigation has been done so far clearly shows that there is *prima facie* evidence against the accused person since being the owner of the property in question, he cannot claim that he is not aware of what is going on within his own property. Investigation is still ongoing and as such, the Investigating Officer may be allowed to complete the same.

10. The learned AAG has also expressed strong reservation against the order passed by the learned Sessions Judge which was referred to by the learned counsel for the petitioner and has submitted that by such findings the learned Sessions Judge has already come to the conclusion that no case is made out against the accused person herein under certain provisions of the Indian Penal Code as well as Section 4 of the Explosive Substances Act, except Section 5 of the same, which will have an impact on the ongoing investigation and may even affect the trial of the case in due course. It is submitted that this Court in its supervisory jurisdiction can take judicial notice of the said observations.

11. It is also the submission of the learned AAG that the accused person is a member of a prominent political party and with his reach and influence, if enlarged on bail there is always the possibility that he may tamper with the witnesses and evidence which will greatly hamper the process and progress of investigation and as such at this juncture, the accused person may not be released on bail.

12. Due consideration is given to the submission and contention of the learned counsels for the rival parties. The facts and circumstance of the case involving the accused person need not be repeated as the same has been discussed and noted above.

13. At the outset, it may be reminded that the powers of the High Court or Sessions Court regarding bail under Section 439 Cr.P.C is a special power

exercised mainly in the realm of discretion. The power can be said to be unfettered. However, as has been laid down in a catena of judgments, the Apex Court has come up with a number of generally accepted principles or guidelines which the High Court or the Sessions Court would do well to follow.

14. Generally, while considering an application for bail in a non-bailable case, certain factors are to be considered, namely;

- i. Whether there is any *prima facie* or reasonable ground to believe that the accused had committed the offence;
- ii. The nature and gravity of the offence;
- iii. Severity of the punishment if the accused is convicted in due course;
- iv. The likelihood of the accused absconding if enlarged on bail;
- v. The antecedents and standing of the accused in the society; and
- vi. The likelihood of witnesses or evidence being tampered.

15. However, it is also well settled that there is no hard and fast rule regarding grant or refusal of bail while each case has to be considered on its own merits in the peculiar facts and circumstances therein.

16. It also is incumbent on the court that while granting bail, though a detailed examination of the evidence and materials on record is not required to be undertaken, *prima facie*, the court must be satisfied as to why bail is

granted or refused. It does not mean however that while granting bail, some reasons for *prima facie* concluding why bail was granted may not be cited.

17. In the case of **Vaman Narain Ghiya v. State of Rajasthan: (2009)**

**2SCC 281** at para 11 the Hon'ble Supreme Court has held as under:

*“11. While considering an application for bail, detailed discussion of the evidence and elaborate documentation of the merits is to be avoided. This requirement stems from the desirability that no party should have the impression that his case has been pre-judged. Existence of a prima facie case is only to be considered. Elaborate analysis or exhaustive exploration of the merits is not required. (See Niranjana Singh v. Prabhakar Rajaram Kharote). Where the offence is of serious nature the question of grant of bail has to be decided keeping in view the nature and seriousness of the offence, character of the evidence and amongst others the larger interest of the public. (See State of Maharashtra v. Anand Chintaman Dighe and State v. Surendranath Mohanty.)”*

18. Applying the above principles to the case in hand, what can be observed is that an allegation, though serious in nature has been made against the accused person, amongst others. The fact that the accused person is the owner of the property in question which is the PO, is not disputed. However, from the statement of the witnesses and the materials on record, there is insufficient evidence to link the accused person to the recovery of the said explosive substances, the fact being that he has stated before the IO that he was not present at the PO for the last few months or so. The fact that the PO is a place where a number of persons used to frequent and as such, the plausible explanation that the same may be planted cannot be ruled out at this juncture without any concrete evidence. The fact that the co-accused, particularly the



concerned caretaker has not yet been apprehended goes to show that the version of the accused person as regard knowledge cannot be believed or disbelieved. A reading of Section 5 of the E.S.Act one would notice the words “*Any person who makes or knowingly has in his possession or under his control any explosive substance...*”. This means that it has to be proved that the accused person knowingly has in his possession explosive substance, which is not the case herein and that it was under his control, which is also not yet proved, even *prima facie*. At this juncture, the benefit of doubt should go to the accused person. It is however qualified that should concrete evidence emerged against the accused person in course of investigation, the I/O is at liberty to take necessary action in accordance with law since the accused person will always be available for questioning at any point of time.

19. The submission of the learned AAG as far as the order of the learned Sessions Judge is concerned, cannot be considered by this Court simply on the ground that the said order is not under challenged or under consideration in these proceedings and if aggrieved, the party has the liberty of approaching an appropriate forum for redressal.

20. In view of the above, this application is allowed, the accused person, Bernard N. Marak is hereby directed to be released on bail, if not wanted in some other cases, provided the following conditions are complied with:

1. That he shall not abscond or tamper with the evidence;



2. That he shall not leave the jurisdiction of India without the prior permission of the I/O or the Court;
  3. That he shall cooperate with the investigation as and when required; and
  4. That he shall furnish a personal bond of ₹ 50,000/- (rupees fifty thousand) only along with two solvent sureties of like amount to the satisfaction of the competent court.
21. Registry to return the case diary.
22. Petition disposed of. Parties to bear their own costs.



**Judge**

Meghalaya  
30.09.2022  
"Tiprilynti - PS"