

Serial No. 04
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 13 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 on the basis of an FIR lodged by SI F. S. Sangma of Chandmari Beat House before the Officer-in-charge Tura Women Police Station, West Garo Hills District.

2. The events which led to the arrest of the accused, husband of the petitioner emanates from a raid conducted by the police on 22.07.2022 at about 6:30 pm at Edenbari in the farm house of the accused person, popularly known as Rimpu Bagan in course of investigation in connection with Tura Women PS Case No. 24(02) 2022 under Section 366 A/376 IPC read with Section 5/6 POCSO Act.

3. In the said raid, it is said that there was a building with many rooms approximately 30 in numbers where many couples were found to have rented rooms for a night for an amount ranging from ₹ 50/- to ₹ 1500/- per room. During the raid a huge cache of India Made Foreign Liquor (IMFL) and local wine were recovered and seized from the building. A crossed bow, arrow, kukri and machete were also recovered and seized. There were also found at the place of occurrence many couples in the room and in parked vehicles in the premises in compromising manner. This led to the conclusion that a brothel was running in the said premises for the purpose of earning monetary gain to the owner. The raiding party also recovered five minor children from the PO, four of whom were boys and one girl living in a room. Altogether the police detained about 68 persons found at the Place of Occurrence (PO) which includes about 42 males and 26 females and also 5 caretakers. The 5 minor children were then handed over to the District Child Protection Unit for care and protection.

4. During the course of investigation, it was revealed that many of those who used to frequent the PO has to pay an entry fee of about ₹ 100/- after which they were allowed to use the premises for merry making including drinking of alcohol and even for indulging in sexual activities. On the basis of this investigation, the police have come to the conclusion that the PO was used as a brothel where prostitution takes place and the accused Bernand N. Marak being the owner of the property has been accused of indulging in the said illegal activities for which he was eventually arrested on 27.07.2022 being apprehended in Uttar Pradesh and was produced before the learned CJM, West Garo Hills on 28.07.2022 where he was initially remanded to police custody for 8 days and thereafter was sent to judicial custody till date.

5. The learned Sr. counsel has submitted that the accused person is innocent and in no way involved with the alleged offence. Leading this Court to the provisions of Section 3/4/5/6 and 7 of the Immoral Traffic (Prevention) Act, 1956 the learned Sr. counsel has further submitted that none of the ingredients mentioned therein are attracted as far as the conduct of the accused person is concerned inasmuch as in his statement before the police, he has clearly denied the accusation that he is running a brothel in the PO and that he is also living on the earnings of prostitution. In fact, the accused person is a public figure being an elected representative of the people as a member of the District Council and has other landed properties and source of income which

does not require his dependence from any alleged income from prostitution or from running a brothel at the PO.

6. The accused person has also stated that he had bought the property in question in the year 2003 and had constructed the building which was entrusted to his caretakers to run the property. The last time he had visited the PO was about two months ago and at that point of time he was not aware of any illegal activities alleged to have been committed therein.

7. 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 09.09.2022 *inter alia*, observed that the provisions of Section 3/4/5 and 7 of the Immoral Traffic (Prevention) Act may not have been committed by the accused person herein, however the court has opined that there is reasonable ground to believe that the accused may have committed an offence under Section 6(I) (b) of the said Immoral Traffic (Prevention) Act, and has submitted that though the learned Sessions Judge has come to a correct conclusion, the observations as far as Section 6(I) (b) 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.

8. It has been further submitted that from the statement of all those who were arrested from the PO, some of whom were found in compromising position, no one has said that the PO was used as a brothel or that prostitution is going on there. The fact that some condoms were found from the PO would not, *ipso facto* prove that the PO is a brothel. It is therefore submitted that the accused person may be allowed to go on bail with any conditions that this Court may deem fit and proper to impose.

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 herein 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. The fact that not only many persons were found to be indulging in sexual activities, the recovery of condoms from the PO also goes to prove that rampant illegal activities were carried out by such person, some of whom were found to be in a compromising position, even as some of them were found to be without clothes. This clearly indicates that the PO is used as a brothel and prostitution is going on unabated. To say that there is no *prima facie* evidence against the accused person is not correct and as such he has been rightly detained in connection with the said case.

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 IT (Prevention) Act 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 elaborately discussed and noted above.

13. At the outset, it may be reminded that the power 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 Niranjan 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 alleged offence inasmuch as there is no initial evidence that the place of occurrence has been used as a brothel, nor is there any evidence to prove that prostitution was carried on in the PO. The only evidence that has emerged so far is that the PO is a place where a number of people used to come and make merry and the rooms were hired to accommodate such visitors who may or may not have

taken part in sexual activities, even if it is so, it is presumably done so between consenting adults. The allegation that a minor girl was found to be sexually assaulted at the time of the raid is not well founded as no specific evidence linking the accused person to that case has been made out from the case dairy. This does not mean that the evidence and material collected in course of investigation as regard the involvement of the accused person cannot be relied upon by the I/O at the time of conclusion of the investigation, what this Court has observed is only a *prima facie* view which is subjected to further evidence in the final analysis.

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 is directed to return the case diary.
 22. Petition disposed of. Parties to bear their own costs.

Judge

Meghalaya
30.09.2022
"Tiprilynti - PS"

