

Serial No. 02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 16 of 2022

Date of Decision: 13.10.2022

Smti. Anjana Wahlang

Vs.

State of Meghalaya

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. Philemon Nongbri, Adv.

For the Respondent(s) : Mr. B. Bhattacharjee, AAG with
Ms. R. Colney, 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 |

JUDGMENT AND ORDER (ORAL)

1. The petitioner has approached this Court with this application under Section 439 Cr.PC for grant of bail to the petitioner's husband Shri. Martin Dkhar, who has been arrested in connection with Sadar P.S. Case No. 190(8) of 2022 under Section 120 (B) and 506 IPC read with Section 13 of the UAPA Act.

2. Heard Mr. Philemon Nongbri, learned counsel for the petitioner who has submitted that the accused, husband of the petitioner was arrested by the

police on 16.08.2022 on the basis of an FIR of even date lodged by Inspector K. Thapa alleging that the said accused person has posted two derogatory comments on his facebook page on 15.08.2022 directed against the Hon'ble Chief Minister of Meghalaya with the comments "HNLC should kill him". This according to the complainant is a conspiracy to jeopardize the ongoing peace talks between the Central Government, the State Government and the HNLC. The accused was accordingly remanded to custody and is still in judicial custody for about 58 days till date.

3. The learned counsel has also submitted that the accused is a driver by profession and is presently employed with a private person and as such, has no criminal antecedent or is involved with any unlawful association within the State. The post in the said facebook page was made while he was under the influence of alcohol and as such it was not a deliberate or conscious act on the part of the accused.

4. The accused being the only bread earner of the family with minor children, if not enlarged on bail, great hardship may be caused to the family. It is also submitted that if enlarged on bail, the accused would abide by any conditions to be imposed by this Court and would cooperate with the investigation as and when required. It is prayed that this petition may be allowed and the accused person may be enlarged on bail.

5. Mr. B. Bhattacharjee, learned AAG appearing on behalf of the State respondent has opposed the prayer made by the petitioner and has also

submitted that the case diary as called for is produced before this Court today. On perusal of the case diary and the screenshots of the offending post, it would appear that it was a deliberate act on the part of the accused and that he was not under the influence of alcohol when the same was made.

6. The submission and contention of the learned counsels for the parties have been duly considered by this Court and the case diary has also been perused. On the day when the accused was arrested, he was forwarded to the Civil Hospital, Shillong for medical examination and it was found out that he had consumed alcohol. He is also found to be physically fit but was also advised to consult a psychiatrist as regard his mental state.

7. The statement of the accused also indicates that he was under the influence of alcohol and was alone at his home when he started browsing his facebook account but he could not remember whether he had posted anything on his facebook page. However, this is a matter of investigation and the Investigating Agency is to be allowed to complete all formalities and to file a report in this regard according to procedure.

8. For consideration of bail to the accused, the Court is guided by well settled principles, statutorily as well as by well established authorities which could be found in a catena of cases passed by the Apex Court as well as the High Courts of this country. In the case of **Shri. Gurbaksh Singh Sibbia &**

Ors. v. State of Punjab: (1980) 2 SCC 565 at para 27, the purpose of granting

bail has been enunciated as follows:

“27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra v. King-Emperor that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the 'Meerut Conspiracy cases' observations are to be found regarding the right to bail which deserve a special mention. In K. N. Joglekar v. Emperor it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there was no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. Hutchinson it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.”

9. In the case of **Sanjay Chandra v. Central Bureau of Investigation: (2012) 1 SCC 40** at para 21, 22 and 23 the Hon'ble Supreme Court has held as under:

“21. In bail application, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.”

10. Taking into consideration the above principles postulated this Court is of the considered opinion that the accused may be allowed to be enlarged on bail.

11. Accordingly, this petition is allowed. The accused is hereby directed to be released on bail, if he is not wanted in any other case, on the following conditions:

- i. That he shall not abscond or tamper with the evidence and witnesses;
- ii. That he shall appear before the Investigating Officer as and when required;
- iii. That he shall not to leave the jurisdiction of India without prior permission of the court;
- iv. That he shall furnished a personal bond of ₹ 20,000/- (rupees twenty thousand) only with two solvent sureties of like amount to the satisfaction of the concerned court.

12. Registry to send back the case diary.

13. Petition disposed of. No costs.

Judge

Meghalaya
13.10.2022
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