

Serial No. 02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 3 of 2023

Date of Decision: 15.03.2023

Smti Griti Areng

Vs.

State of Meghalaya

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)

Mr. M.F. Quereshi, 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 |

ORDER

1. This is an application preferred under Section 439 Cr.PC with a prayer for grant of bail to the accused / husband of the petitioner herein.
2. Mr. M.F. Quereshi, learned counsel for the petitioner has submitted that an FIR dated 18.01.2023 was filed by the In-Charge Gumaghat (P) South West Khasi Hills alleging that the accused is a Bangladeshi national who was earlier arrested in connection with Shillong Sadar PS Case No. 181(9)2008 under Section 14 of the Foreigners Act and being convicted by the court, he was pushed back to Bangladesh on 04.02.2009. However, the

accused returned to India fraudulently and got himself adopted by Shri Clearson Marak and Smti K. Sari Sangma and was staying at Lower Rajapara, PS, Ranikor under South West Khasi Hills. He later married the petitioner herein and was involved in export business. For the offences of providing false identity and fraudulent obtaining of Government documents amongst others, the FIR was filed for taking action against him.

3. On the basis of the said FIR, Ranikor PS Case No. 3(1)2023 under Section 177/196/198/200/471/474 IPC r/w Section 14 of the Foreigners Act, 1946 was registered and the accused was accordingly arrested in connection thereof.

4. The learned counsel has further submitted that the accused is not a Bangladeshi national and he was never arrested or involved in the case of Shillong Sadar PS Case No. 181(09)2008. Infact, to prove his bonafide, the accused person has also obtained an Election Identity Card, PAN Card and an Indian Passport from the competent authority.

5. The main allegation against the accused is that he is a Bangladeshi national in which case the accused must be allowed to prove his nationality and that too before a proper forum wherein, the proceedings thereof would be civil in nature and as such until the competent court has come to a finding on the basis of evidence recorded that the accused / husband of the petitioner is a foreign national, the assertion of the police of the complainant that he is a Bangladeshi national cannot be accepted at this stage.

6. The learned counsel has also submitted that the accused is said to have been involved in another case being Nongkhyllam, PS Case No. 7(5)2022 under Section 279/427/417 IPC r/w Section

180/181/192/192A/196/190 MV Act is also totally irrelevant as the same pertains to a motor vehicle accident case.

7. The learned counsel referring again to the Sadar PS Case No. 181(09)2008 has submitted that though the accused in that case is also named Rana Ahmed and the address of the said accused person was shown in Bangladesh for which he had pleaded guilty before the court of the Chief Judicial Magistrate, Shillong and vide order dated 22.01.2009, was directed to be pushed back to Bangladesh, yet the accused person in this case is not the same person as the father's name is different to that of the accused person in the said Sadar PS Case No. 181(09)2008. The fact that the accused is living together with the petitioner since 05.10.2006 and their marriage being registered by the Marriage Officer, East Khasi Hills, Shillong on 10.10.2007 would indicate that the accused person has never been convicted in any case under Section 14 of the Foreigners Act.

8. It is therefore prayed that the accused may be enlarged on bail with any conditions that this Court may deem fit and proper to impose.

9. Mr. B. Bhattacharjee, learned AAG has strongly opposed the prayer made for grant of bail and has submitted that the case diary as called for has been duly produced before this Court.

10. It is the submission of the learned AAG that there is a strong prima facie case against the accused person Shri Rana Ahmed as preliminary investigation would reveal that he was earlier arrested in connection with Sadar PS Case No. 181(09)2008 for which he was deported back to Bangladesh on 04.02.2009. However, he managed to re-enter into Meghalaya and is now holding a number of documents said to have been

issued by authorities in India which are procured fraudulently. The learned AAG has also pointed out that at Annexure-2 to this petition, photocopy of the EPIC Card of the accused was annexed which shows that he has obtained the same on 17.03.2020 whereas, if the statement of the accused that he was born and brought up in Assam is to be believed, then he had obtained the said EPIC Card fraudulently for which the proper procedure should have been by way of transfer of residency.

11. The learned AAG has therefore submitted that the accused person may not be enlarged on bail at this stage but to allow the investigation to be completed.

12. This Court has considered the submission made by the learned counsels for the parties and has also perused the petition as well as the case diary.

13. The factual aspect of the matter as stated above is that the accused/ husband of the petitioner has been detained for alleged offences of fraud and in possession of forged documents and also for violation of the provisions of the Foreigners Act which attracts the penalty under Section 14 of the said Act.

14. A perusal of the case diary would reveal that apart from recording the statement of relevant witnesses including the accused person, nothing substantial has been made out to connect the accused with the alleged offences. Though reference was made to the complicity of the accused person in the Sadar PS Case No. 181(9)2008 and also that he has obtained most of the basic documents like EPIC Card, PAN Card and Passport by fraudulent means, yet nothing concrete has been indicated as to how and in

what manner the fraud was committed. There is also found in the case diary a seizure list indicating the nature and number of documents and cash seized from the accused person, which list also includes a birth certificate of the accused person said to have been issued by the Government of Assam, this Court however is not able to go through the material seizure as the same are not found in the record.

15. Be that as it may, this Court is of the opinion that the Investigating Officer ought to be allowed some more time to complete the investigation and to file his report under Section 173 Cr.PC to come to a conclusion as to whether, there is any prima facie evidence to proceed against the accused person for trial.

16. It is the considered opinion of this Court that the prayer of the petitioner for grant of bail is too premature at this stage since enlarging the accused person on bail at this juncture may result in tampering of evidence.

17. Accordingly, this petition is hereby dismissed.

18. Registry to send back the case diary.

19. Petition disposed of. No costs.

Judge

Meghalaya

15.03.2023

"N. Swer, Stenographer"