

Serial No. 02
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 5 of 2023

Date of Decision: 16.03.2023

Smti. Phielina Jyndiang

V.S.

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. N.D. Chullai, AAG with
Ms. R. Colney, GA

i)	Whether approved for reporting in Law journals etc.:	Yes/No
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ii)	Whether approved for publication in press:	Yes/No
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JUDGMENT AND ORDER (ORAL)

1. This is an application under Section 439 Cr.P.C for grant of bail to the accused person, Shri. Aylmer S. Hynniewta, son of the petitioner herein, who was arrested in connection with CID P.S. Case No. 03(11) of 2022 under Sections 120(B)/409/420 IPC read with Sections 11/13(1)(a)/13(2) PC Act, 1998.

2. Heard Mr. Philemon Nongbri, learned counsel for the petitioner, who has submitted that the background facts of the case is that the police department requiring a Mobile Forensic Van with equipments had sought for quotations from M/s Bomver Force and the said firm in reply vide letter dated 04.12.2018 had quoted a price of ₹ 42,50,000/- (Rupees forty two lakhs fifty thousand) only for the same following which, the police department issued a supply order vide letter dated 07.06.2019.

3. In the said supply order, all the items that were required to be supplied were listed and divided into three categories namely A, B and C, A being the vehicle itself which is a Force Traveller Delivery Van 4020 (6 wheel), B being the equipments required for laboratory interior and C being the testing equipments required to be kept in the vehicle.

4. Again, it is submitted that on receipt of the said supply order, M/s Bomver Force took steps to order the vehicle and all the required equipments under A, B and C. The vehicle and interior fittings under A and B was ordered from Force India, while the order for items categorized at C was made from one company by the name of Technomaxx Forensics Pvt. Ltd., Faridabad, Haryana for a sum of ₹ 3,92,940/- (Rupees three lakhs ninety two thousand nine hundred forty) only.

5. The vehicle along with the interior works on being completed and temporary registration obtained, the firm wanted to deliver the same to the police department, however with an endorsement that the testing equipment at C is yet to be delivered as the same has not yet been supplied by the supplier and to this effect, a personnel from the police department came and took delivery of the vehicle with a check list wherein it was clearly marked that the vehicle at category A and B was received except for C which was not received but was however assured by the supplier firm that as soon as the said items are received from Technomaxx Forensics, the same will be handed over to the police department.

6. The learned counsel for the petitioner has then submitted that an FIR dated 14.11.2022 was lodged by C.I.D Meghalaya Police alleging that during the period between January 2019 to March 2020, Shri. G.K. Iangrai, MPS, AIG (A) had entered into a criminal conspiracy with unknown public servants and others to cause wrongful loss to the Government of Meghalaya and wrongful gain to himself and others in the matter of procurement of vehicles to the police department. In this regard, it is also said that Shri. Iangrai had sanctioned an amount of ₹ 42,30,000/- (Rupees forty two lakhs thirty thousand) only to M/s Bomver Force for the crime scene vehicle

which vehicle was delivered without any tools mentioned in the supply order.

7. Pursuant to the said FIR, the police inquired into the matter and questioned the accused person as well as the petitioner and her daughter who are the family members of the proprietor of the said M/s Bomver Force, who by then, had since expired on 05.12.2021 and has eventually arrested the son of the petitioner on 18.02.2023.

8. The learned counsel has submitted that the accused person though he is the son of the deceased proprietor of the firm, yet he is not the owner of the firm as he is working in the said firm in the capacity of an employee and has acted on behalf of the firm and the proprietor and not on his own behalf even when dealing with the matter of supply of the said Mobile Forensic Van. In his capacity therefore, he could not have entered into any criminal conspiracy with anyone and as such, his arrest and detention is without any sanction of law. Even otherwise, it is the commitment of the firm that as and when the said equipments at category C are received, the same will be supplied immediately to the department since the amount against the said equipments has already been received by Technomaxx Forensics. At the most, it could have been a deficiency of service which

should not have attracted criminal liability.

9. It is also the submission of the learned counsel that all the necessary papers and documents with regard to the case had been seized by the police from the firm and the statement of the relevant witnesses including that of the accused person has also been recorded and as such, at this juncture there would be no impediment if the accused person is released on bail.

10. It is therefore, prayed that this petition may be allowed and that the accused person be enlarged on bail with any conditions as deem fit and proper to be imposed by this Court.

11. Per contra, Mr. N.D. Chullai, learned AAG, appearing for the prosecution has submitted that a perusal of the case diary in which is recorded the progress of investigation and the steps taken by the Investigating Officer in this case would reveal that it is the accused person who is responsible for the whole transaction as his name has appeared in all the relevant documents as well as on the receipts of the cheque issued in favour of M/s Bomver Force. It is submitted that the accused may not be enlarged at this stage.

12. This Court has given due consideration to the submission made

and has also perused the contents of the petition including the annexures and also the contents of the case diary and all relevant papers produced by the prosecution.

13. The facts narrated above is found to be true inasmuch as the supply order for the said Mobile Forensic Van has indeed been made by the police department from M/s Bomver Force and the said vehicle has also been supplied however without the equipments as categorized at C, which fact is known to the police department at the time of taking delivery of the vehicle. It is also in evidence and admitted by the accused person that a sum of ₹ 42,30,000/- (Rupees forty two lakhs thirty thousand) only was received by the firm. As to the equipments amounting to about ₹ 3,92,000/- (Rupees three lakhs ninety two thousand) only which are yet to be supplied, nothing has been said that such equipments will not be supplied in future.

14. It is also seen from the records that the name of the accused person did not figure in any of the correspondence or transaction, but it is only the admission of the accused person himself who has stated that he has handled the matter of delivery of the vehicle and had also received the cheque for the agreed amount.

15. This Court is in agreement with the learned counsel for the

petitioner that *prima facie* the accused person is not the proprietor of the firm but is employed in the capacity of a sales manager.

16. Be that as it may, the role of the accused person in the case has not exactly been determined by the I/O at this stage and considering the facts and circumstances of this case including the seizure made, there may no longer be any requirement for the accused person to be further incarcerated in custody.

17. 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 observed that: -

“21. In bail applications, 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 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.”

18. Again, in the case of **Dipak Subhashchandra Mehta v. Central Bureau of Investigation & Anr.:** (2012) 4 SCC 134 at para 32, the Hon’ble Supreme Court has held that: -

“32. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly, where the accused is charged of having committed a serious offence. The court granting bail has to consider, among other circumstances, the factors such as (a) the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; (b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and (c) prima facie satisfaction of the court in support of the charge. In addition to the same, the court while considering a petition for grant of bail in a non-bailable offence, apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted.”

19. Here is a case where, in the opinion of this Court the discretionary power for grant of bail has to tilt towards the accused person and as such,

this petition is found meritorious and the same is hereby allowed.

20. The accused person, Shri. Aylmer S. Hynniewta is directed to be released on bail 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 leave the jurisdiction of the State without prior permission of the Investigating Officer or the court concerned; and
- iv. That he shall furnish a personal bond of ₹ 30,000/- (Rupees thirty thousand) only with two solvent sureties of like amount to the satisfaction of the concerned court.

21. Registry is directed to send back the case diary.

22. Petition disposed of. No costs.

Judge

Meghalaya
16.03.2023
"Tiprilynti-PS"