

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 12 of 2023

Date of Decision: 20.04.2023

Jumma Khan Vs. State of Meghalaya

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. A. Bhattacharya, Adv.
For the Respondent(s) : Mr. S. Sengupta, Addl. PP.
Ms. A. Thungwa, GA.

- | | | |
|-----|--|--------|
| 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. Heard Mr. A. Bhattacharya, learned counsel for the accused Jumma Khan, represented by the petitioner Mr. Pradip Sinha who has submitted that this is an application under Section 439 Cr.P.C with a prayer for grant of bail on behalf of the accused Jumma Khan who was arrested by the police in connection with Umiyam P.S. Case No. 04 (01) of 2023 under Section 307/326/34 IPC.

2. The learned counsel has referred to the FIR lodged before the

Officer-in-Charge, Umiam Police Station, Ri-Bhoi District by Mr. Abhineet Srivastava on 26.01.2023 at about 10:15 pm, wherein the complainant/informant has stated that on 21.01.2023 at about 7:30 pm, he along with three friends had come to Orchid Umiam Lake to attend an event called “Riders Mania 23” organized by the Royal Enfield Riders Association of Meghalaya (RERAM). After the registration process is over, the said informant went inside the camp and on reaching near the stage area, they saw Mr. Jumma Khan and three other persons drinking alcohol. Suddenly, upon seeing them, Jumma Khan and the others attacked him with a big size wooden log on his head, but he defended himself by raising his right hand as a result of which the blow hit his forearm. After the incident, the informant and his friends met the organizers of the event on 22.01.2023 and they were requested to leave the camp. Thereafter, the informant went back to his home town to Silchar for medical treatment where it was revealed that his forearm has been broken.

3. On the basis of the said FIR, the police accordingly registered the said Umiam P.S. Case No. 04 (01) of 2023 on 26.01.2023 and in course of investigation launched, three persons were arrested including Jumma Khan and later on, another three persons suspected to be involved in the incident were also arrested and are now in judicial custody.

4. It is also the submission of the learned counsel that the accused

Jumma Khan and his friends are members of a Motor Bike Club named, “Silchar Thumpers Bullet Club”, and on coming to know of the said event called BOBMC (Brotherhood of Bulleteers Motorcycling Consortium) Rider Mania at Orchid Resort, Umiam organized by the Royal Enfield Riders Association of Meghalaya (RERAM), they had accordingly registered themselves and reached Umiam on 21.01.2023 at 4:30 pm and went into the tent, coming out of the same only at 8:30 - 9:00 pm for food.

5. The accused/petitioner Jumma Khan has however acknowledged that both he, his friends as well as the informant and his friends were present at the BOBMC event where once upon a time, they were also members of the Silchar Thumpers Bullet Club, but due to the anti-club activities by some of them, they have now parted ways.

6. The learned counsel has however submitted that the allegation made by the informant in the said FIR as well as the events which took place thereafter would only go to show that the said allegation are all concocted and the alleged incident is imaginary, inasmuch as, the FIR records that the incident occurred at about 7:30 pm on that day i.e. 21.01.2023 whereas, the accused Jumma Khan had come out of his tent only at 8:30 pm, he was therefore never at the scene of the crime, if at all it happened.

7. The learned counsel has also submitted that the inclusion of

Section 307 IPC is only to allow the police to immediately arrest Jumma Khan and others, when prima facie, it is noticed that the informant himself has stated that after the alleged incident, he was seriously injured, but had returned to Silchar. It could not be imagined as to how he managed to ride back to Silchar which is about 299 Kms from Shillong on his bike.

8. The learned counsel has however submitted that investigation and evidence in course of trial will proved the innocence of the accused, however at this point of time, this application has been preferred seeking grant of bail on the ground that the accused Jumma Khan is a sick person and is also now under treatment at the Civil Hospital, Nongpoh with a severe case of diabetes for which he has to take insulin four times a day, which is not possible while still in judicial custody or even at the Nongpoh Civil Hospital.

9. It is also the submission of the learned counsel that the accused Jumma Khan has been in custody since 25.03.2023 when he was arrested and considerable time have elapsed, for which it can be assumed that the process and progress of investigation has reached a stage where the statement of the relevant witnesses have been examined and all other preliminary steps have been taken and therefore, keeping the accused in further custody is no longer necessary.

10. Stressing on the fact that the accused Jumma Khan is an ailing

person, therefore, for his proper medical treatment, he may be allowed to be enlarged on bail with any conditions as deemed fit to be imposed by this Court, submits the learned counsel.

11. Mr. S. Sengupta, learned Addl. PP appearing on behalf of the State respondent has submitted that the case diary as called for is produced before this Court today and on perusal of the same, this Court may be pleased to reject this application.

12. It is also the submission of the learned Addl. PP that at this stage, the Investigating Officer requires more time to complete his investigation and it would be too premature to release the accused on bail without giving adequate opportunity for the I/O to come to a finding on the complicity of the accused Jumma Khan and others so as to file the charge sheet.

13. This Court has given due consideration to the submission made, the accused Jumma Khan had forwarded a plea of alibi, inasmuch as, he has denied being a party to the alleged assault upon the informant and has also questioned the manner in which the police have registered the case, inter alia, under the offence of attempt to murder (Section 307 IPC), when as pointed out events would show that the informant was never seriously injured since he could managed to travel back to Silchar and to come again to Umiam Police Station to file his FIR after six days of the alleged incident which would only cast doubts on the veracity of the allegation

made.

14. As submitted by the learned counsel for the petitioner, it is indeed a matter of evidence as to what actually happened on the said date of incident, but it cannot be denied that the alleged incident of assault had taken place in a public place with many people present. The informant had also named some eye witnesses who in their statement before the police had corroborated the narration of the informant.

15. This Court cannot venture to come to any conclusion on this account as to whether the informant was indeed seriously injured as a result of the alleged assault upon him or that the accused Jumma Khan and others are the perpetrators of such an act. Prima facie, it does appear that the incident had actually happened and the informant was indeed injured, but as to who is the culprit or what is the extent of injuries sustained is a matter of evidence in course of trial.

16. Time and again, while a competent court is called upon to decide on a bail application as the present case, the Court is guided by well settled judicial pronouncements, particularly of the Apex Court which has, in a catena of judgments laid down the guiding principles and parameters to be considered for grant or refusal of bail. Suffice it to say that the cardinal principle of 'bail and not jail' would hold good even today.

17. What could be understood is that the common factor to be taken

into account while considering an application for bail is the nature and gravity or seriousness of the offence alleged, the character of the evidence, the possibility of the accused absconding or not cooperating with the investigation and trial and also the fact that the accused, if enlarged on bail, may tamper with the evidence and witnesses.

18. Keeping in mind the aforementioned factors to be considered, this Court is also drawn to the observation of the Hon'ble Supreme Court in the case of *Sanjay Chandra v. CBI: (2012) 1 SCC 40*, wherein at para 21 of the same, it has been observed that:

“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.”

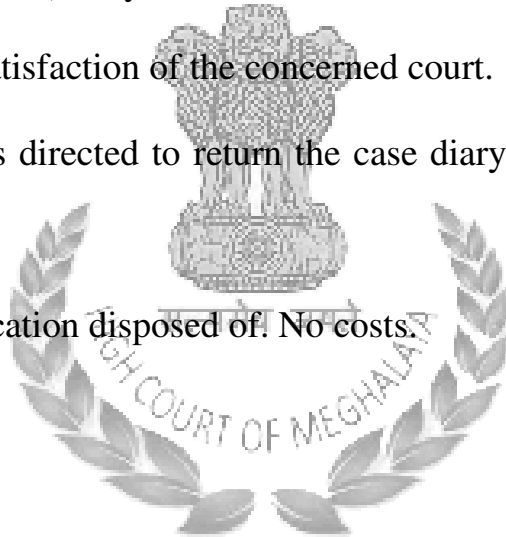
19. On an overall consideration of the facts and circumstances of the case, this Court is of the view that the accused Jumma Khan may be released on bail on certain conditions. The fact that the accused is also a sick person would also be one of the determining factors for this Court to consider the prayer for grant of bail.

20. Accordingly, the accused is directed to be released on bail on the following conditions that:

- i) He shall not abscond or tamper with the evidence and witnesses;
- ii) He shall appear before the Investigating Officer as and when required;
- iii) He shall not leave the jurisdiction of India without prior permission of the I/O or the Court concerned and
- iv) 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 return the case diary to the learned Addl. PP immediately.

22. Bail application disposed of. No costs.



Judge

Meghalaya
20.04.2023
"D. Nary, PS"