

Serial No. 03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Petn. No. 78 of 2023

Date of Decision: 18.07.2023

Shri. Khupliansum Vs. State of Meghalaya & 4 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. M.F. Qureshi, Adv.
For the Respondent(s) : Mr. B. Bhattacharjee, AAG. with
Mr. A.H. Kharwanlang, Addl. Sr. 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 (ORAL)

1. Heard Mr. M.F. Qureshi, learned counsel for the petitioner.
2. Also heard Mr. B. Bhattacharjee, learned AAG assisted by Mr. A.H. Kharwanlang, learned Addl. Sr. GA appearing on behalf of the State respondents.
3. The petitioner has approached this Court on behalf of the accused person Smti. Kimneikhol Khongsai who was detained in custody in connection with the proceedings in Crl. (NDPS) Case No. 9 of 2022 arising out of Khliehriat P.S. Case No. 64 of 2022 under Section 21(c)/22(a)/27(a)/29 NDPS Act and Crl. (NDPS) Case No. 11 of 2022

arising out of Khliehriat P.S. Case No. 65 of 2022 under Section 21(c)/29 NDPS Act.

4. The grievance of the petitioner is that though the accused person is in custody for a very long time since the month of October, 2022, the trial before the Trial Court has not proceeded in the manner it should have. Even though, the charge sheet was filed, yet the complete charge sheet has not yet been filed, inasmuch as, the court is still awaiting for the FSL report to be filed by the Investigating Officer before commencing with the full-fledged trial.

5. The delay in the proceedings has violated the liberty of the accused and is therefore, an infringement of the provision of Article 21 of the Constitution of India, submits the learned counsel and under the circumstances, it would be, but, prudent for the Trial Court to proceed with the proceedings and in the inability to do so, the accused is entitled to be released on bail, even on default bail. It is because of the circumstances so evident in the proceeding, wherein the trial against the accused person and other co-accused have been hampered and delayed, the petitioner has submitted that the proceedings as a whole may be quashed and the accused person to be set at liberty.

6. Per contra, the learned AAG has submitted that the first objection is with regard to the locus of the petitioner who is not at all involved in the

matter, when in fact, for an application under Section 482 Cr.P.C, the aggrieved person or the concerned person should have been the one to approach this Court, even though the accused may be in custody, there is no bar for filing of an appropriate application under the appropriate provisions of law before this Court or any competent court for that matter.

7. The learned AAG has also referred to the orders dated 28.06.2023 and 05.07.2023 passed by the learned Trial Court, such orders being annexed as Annexure - XI and XII respectively at page 84 and 85, to say that when the matter was called up before the court, the defence counsel was not available and as such, the accused or the petitioner for that matter cannot come before this Court to say that the accused is prejudiced in the matter.

8. In reply, the learned counsel for the petitioner has submitted that it is not the fault of the defence counsel that she was not present when the matter was called up before the Trial Court on the said date, that is, 28.06.2023 and 05.07.2023, the fact is that there was no link provided for appearance through virtual mode. In this connection, the Trial Court or the authorities concerned is requested to ensure proper connectivity to enable the parties to appear before the court through virtual mode.

9. The learned AAG further submits that the trial is proceeding in its usual course and vide the orders dated 28.06.2023 and 05.07.2023 (supra)

the next date fixed is 19.07.2023 for production and submission of pending FSL report. It is therefore prayed that this petition is devoid of merit and the same is liable to be dismissed.

10. This Court on hearing the parties and on perusal of the petition, without going into the detailed merits of the case, would observe that the grievance of the petitioner or the accused person is primarily with regard to the slow pace of the proceedings before the Trial Court as well as the irregularity in the proceedings, inasmuch as, though the charge sheet was filed, the complete charge sheet has not yet been filed pending the production of the FSL report, and that the proceedings is stalled at this stage to the detriment of the accused person in question.

11. On further observation, this Court, particularly on going through the relevant orders at Annexures - XI and XII of this petition, would observe that the Trial Court has done nothing out of the ordinary, but has proceeded as per procedure. Failure to file the FSL report in time would not be a valid ground for the proceedings to be quashed. The incarceration of the accused in custody even if it is for a long period, would also not be a ground for quashing of the proceedings. It would be open for the accused person to prefer an application for bail, if so advised. Therefore, this Court is of the considered opinion that this application is devoid of merit, the same is liable to be dismissed.

12. In view of the above, this petition is accordingly dismissed and stands disposed of.

13. Before parting, this Court would request the Trial Court to proceed with the matter in accordance with law and to ensure that there is no unnecessary delay in the proceedings.

14. There will be no order as to costs.

Judge

Meghalaya
18.07.2023
"D. Nary, PS"

