



Serial No. 04
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A. No. 35 of 2024

Date of Decision: 01.10.2024

Shri. Geisinglung Meiringmei
Shri. Digonthu Meiringmei,
Resident of Mukti Khullen,
Nungba District,
Manipur

.....Petitioner

-Versus-

National Investigation Agency (NIA)
Represented by its Deputy Superintendent of Police (NIA)

.....Respondent

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Thapa, Adv.
Mr. D. Theimei, Adv.

For the Respondent(s) : Dr. N. Mozika, DSGI with
Ms. L.M.D. Marak, Adv.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No



ORDER (ORAL)

Per W. Diengdoh, (J):

1. The petitioner (sic appellant) being aggrieved with the order dated 22.05.2024 passed by the learned Special Judge (NIA), Shillong in Bail Application No. 75(H) 2024 wherein his prayer for grant of bail was rejected, has now approached this Court with this instant appeal under Section 21(4) of the National Investigation Agency Act, 2008.

2. Heard Mr. S. Thapa, learned counsel for the petitioner who has submitted that the on an FIR dated 14.05.2018 lodged at Jowai Police Station, Jaintia Hills District wherein it was alleged that the petitioner herein and his associates as members of the banned NSCN (K) outfit had demanded a sum of ₹ 25,00,000/- (rupees twenty five lakh) only from Bharatya Infra Projects Limited (BIPL) Company on 12.05.2018 in lieu of releasing an abducted employee of the said company. In course of investigation the Government of India, Ministry of Home Affairs (MHA) had caused the National Investigation Agency to investigate into the case and the same was re-registered as FIR No. RC-03/2018/NIA-GUW under Sections 120A, 120B, 121, 121A, and 384 IPC read with Section 10 and 13 of the Unlawful Activities (Prevention) Act.

3. On investigation launched, the petitioner was arrested on 14.05.2018 and is still in custody till date. Of course, along with the petitioner six other accused persons were arrested, three of them have since been released on bail.

4. In due course, the charge sheet was filed inter alia finding the



petitioner to be involved in this alleged incident and therefore he is charged with the offences aforementioned. The stage of the case being now registered as Special (NIA) Case No. 1 of 2018 pending before the learned Sessions Judge (NIA) case is for recording of the evidence of prosecution witnesses.

5. The learned counsel has further submitted that the main charge against the petitioner herein is that he was the one who has directed for the kidnapping and also for demanding of ransom money from the said BIPL Company as an exchange for release of the abducted employee of the Company, however, there is no credible evidence either in the charge sheet or through the witnesses to implicate the petitioner herein as far as the alleged offences are concerned.

6. However, the learned counsel would submit that at this point of time, the petitioner having been in custody for more than six years, there is no likelihood of the trial to be concluded in the very near future therefore, the learned trial court failing to consider this aspect of the matter among other credible grounds, the impugned order cannot be sustained.

7. The learned counsel has however pressed only on one ground that is, that because of the long incarceration of the petitioner his personal liberty as enshrined under Article 21 of the Constitution of India has been deprived. Considering the well settled principle of bail jurisprudence that bail is the rule and jail is the exception and that an accused person is always assumed to be innocent until proven guilty



which is to be done so in course of trial, keeping the petitioner in custody for more than is necessary will only defeat this liberty.

8. To support his contention that the petitioner is entitled to be enlarged on bail on the ground of prolonged custody, the learned counsel has referred to a number of authorities as follows:

- i. Union of India v. K.A. Najeeb, (2021) 3 SCC 713, para 17, 18 and 19;
- ii. Javed Gulam Nabi Shaikh v. State of Maharashtra & Anr., 2024 SCC Online SC 1693, para 8, 9, 18, 19 20 and 21;
- iii. Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v. State of Uttar Pradesh, 2024 SCC Online SC 1755, para 21, 22, 23.1, 27.1 and 28;
- iv. Balwinder Singh v. State of Punjab & Anr., Special Leave to Appeal (Crl.) No(s). 8523/2024, para 7, 8, 9 and 10.

9. The learned counsel has reiterated that the issue of prolonged custody and the right to be granted liberty vis-à-vis the proceedings in the trial has also been noticed by this Court in a case between the parties herein being Crl.A. No. 18/2021 wherein vide order dated 01.05.2023 this Court at para 7 has elicited a response from the respondent/NIA that although the prosecution intended to examine about 150 witnesses, only about 75 or so witnesses would be examined and the trial, at its present pace, should be completed in course of this year, meaning 2023. However, till date, only about 69 witnesses have been examined and



considering the fact that most of the witnesses are from Manipur, under the prevailing situation there is no likelihood of the trial being concluded before the end of this year.

10. For the reasons stated hereinabove, the learned counsel has submitted that if enlarged on bail, the petitioner will ensure that he will comply with any conditions to be imposed by this Court.

11. Per contra, Dr. N. Mozika, learned DSGI has submitted that apart from the offences being serious in nature, notwithstanding the fact that the petitioner has been in custody for about six years or so, the trial is proceeding with about 69 witnesses already examined and only approximate 6 or more witnesses to be examined.

12. Another contention raised by the learned DSGI is that the petitioner is a residence of the State of Manipur and if enlarged on bail, there is every possibility that he will abscond, therefore, being a flight risk, bail may not be granted at this point of time.

13. On the contention of the learned counsel for the petitioner as regard prolonged trial and the reliance of the petitioner in the case of K.A. Najeeb (supra), the learned DSGI has referred to the case of Gurwinder Singh v. State of Punjab & Anr., (2024) 5 SCC 403, wherein at para 45 and 46 of the same the case of K.A. Najeeb was distinguished by the Apex Court to hold that mere delay in trial pertaining to grave offences cannot be used as a ground to grant bail. It is therefore prayed that this appeal be dismissed.



14. In reply, the learned counsel for the petitioner has submitted that the Gurwinder Singh case (supra) was also referred to in the case of Sheikh Javed Iqbal (supra) wherein at para 31 of the same the Apex Court has observed that in the K.A. Najeeb case the accused therein was already in custody for more than five years and that the NIA had filed a long list of witnesses to be examined, the unlikelihood of trial being completed in the near future has influenced the court to grant him bail, whereas in the Gurwinder Singh case trial is already on the way and 22 witnesses including the protected witnesses have been examined and therefore, it was observed that mere delay in trial pertain to grave offences cannot be used as a ground to grant bail. However, it is reiterated that there is no likelihood of the remaining witnesses to be examined within a short span of time from here on and as such, on this ground alone, the petitioner may be allowed to be enlarged on bail.

15. This Court has considered the arguments advanced by the learned counsels for the rival parties and is made to understand that, irrespective of the severity of the offence alleged, the prolonged incarceration of the petitioner in custody has been cited as a ground for grant of bail, the relevant authorities in this regard being cited by the learned counsel for the petitioner to lay stress on this aspect of the matter.

16. The observation of the Apex Court in the case of K.A. Najeeb (supra) at para 17, 18 and 19 do resemble the factual position of the case of the petitioner herein. It would be but profitable for the same to be reproduce herein as follow:



“17. It is thus clear to us that the presence of statutory restrictions like Section 43D (5) of UAPA per se does not oust the ability of constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent’s prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant’s right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent’s rights guaranteed under Part III of our Constitution have been well protected.

19. Yet another reason which persuades us to enlarge the respondent on bail is that Section 43D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS Act. Unlike the NDPS Act where the competent court needs to be satisfied that prima facie the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such precondition under UAPA. Instead, Section 43D (5) of the UAPA merely provides another possible ground for the competent court to refuse bail, in addition to the wellsettled



considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by absconsion, etc.”

17. Even if reliance is placed in the case of Gurwinder Singh (supra), particularly at para 45 of the same, the factual situation of the case of the petitioner is that the trial has taken a considerable period of time, to the extent that during the intervening period, the petitioner has been in custody for more than six years or so. It is a matter of course that since the charge sheet has been filed and recording of the evidence of the witnesses is in progress, there is no possibility for the petitioner/accused person to tamper with the evidence or witnesses at this point of time.

18. As to the commitment given by the prosecution that the trial will be expedited with only a few more witnesses to be examined, this Court would recall the said observations made at para 7 in the order dated 01.05.2023 in Crl.A. No. 18/2021 to say that in spite of the assurance given by the prosecution that the trial will be completed by the end of 2023, we are now almost at the fag end of 2024 and still more witnesses are yet to be examined. On this ground alone this petition deserves to be allowed.

19. On an overall consideration of the facts and circumstances of the case of the petitioner, this Court hereby set aside and quash the impugned order dated 22.05.2024 (supra) and directs that the petitioner be released on bail on the following conditions:-

- i. That he shall not abscond or intimidate the witnesses;
- ii. That he shall appear before the trial court as and when



required;

- iii. That he shall not leave the jurisdiction of the North Eastern States without prior permission of the trial court;
- iv. That he shall surrender his passport (if he has one) to the trial court and can use the same only if allowed by the trial court; and
- v. That he shall bind himself on a personal bond of ₹ 1,00,000/- (rupees one lakh) only with two solvent sureties of like amount to the satisfaction of the trial court.

20. Needless to say, if the petitioner violates any of the above stipulated conditions, the prosecution is at liberty to pray for cancellation of bail before the trial court.

21. In view of the above, this appeal is hereby disposed of. No costs.

(B. Bhattacharjee)

Judge

(W. Diengdoh)

Judge