Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 3 of 2020

Date of Decision: 16.06.2020

Smti. Milon Das Vs. State of Meghalaya and Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K. Paul, Adv.
For the Respondent(s) : Mr. B. Bhattacharjee, AAG. with
Mr. A.H. Kharwanlang, GA.

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

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

1. One Shri. Sushen Das was arrested on 29.02.2020 in connection with Shella P.S. Case No. 9 (2) 2020 under Section 148/326/506/307/302/34 IPC read with Section 3 of PDPP Act. The accused person is presently in Judicial custody and lodged at Tura District Jail, West Garo Hills.

2. The petitioner herein is the wife of the said accused person Shri. Sushen Das who has moved this instant petition before this Court invoking the provisions of Section 439 Cr.P.C with a prayer for release of the accused person above named.

3. Heard Mr. K. Paul, learned counsel for the petitioner who has submitted that the petitioner would rely on one aspect of the matter i.e. the fact that the accused person is entitled to bail on the ground of sickness, which has been elaborately pointed out by the learned counsel submitting that the accused

person is suffering from “Bronchiectasis with partial subsequental collapse in the right lower lobe of the lung”.

4. The learned counsel for the petitioner has led this Court to an understanding of the said medical condition of the accused as described in Wikipedia, copy of which has been annexed as Annexure-4 of the petition.

5. This Court had initially call for the medical report as regard the medical condition of the accused, which was subsequently produced before this Court by way of an affidavit dated 15.06.2020. The C.D has also been called for, copy of which was accordingly produced by Mr. A.H. Kharwanlang, learned GA. I have perused the same.

6. The learned counsel for the petitioner was accorded an opportunity to be supplied with a copy of the said affidavit for his response.

7. At the hearing, learned counsel for the petitioner has submitted that the affidavit filed by the State respondents would show that the patient/accused was admitted in Tura Civil Hospital on 01.06.2020 and was diagnosed for Antral Gastritis with Duodenitis and RTI on the basis of an examination conducted at the Golden Heart Health Care Clinic at Tura.

8. This, according to Mr. Paul is contrary to the order of this Court, wherein this Court vide order dated 29.05.2020 had directed for examination of the accused at the Civil Hospital, Tura and also assumably to direct the examination only with regard to the condition of the accused as far as presence of Bronchiectasis and lung collapse is concerned.

9. Learned counsel for the petitioner has finally submitted that this Court may be pleased to direct that the accused/patient be produced before a duly constituted Medical Board at NEIGRIHMS, Mawdiangdiang, Shillong and to call for the medical report thereafter.

10. Mr. B. Bhattacharjee, learned AAG assisted by Mr. A.H. Kharwanlang, learned GA for the State respondents has submitted that the concerned Sr. Medical and Health Officer, Tura had issued the medical certificate dated 11.06.2020 with his opinion that the accused/patient was admitted on 01.06.2020 for Antral Gastritis with Duodenitis and RTI and his condition having been improved, he was subsequently discharged on 08.06.2020 and fit to be kept under District Jail along with medication.

11. The learned AAG has also opposed the submission of the learned counsel for the petitioner for reference of the patient/accused to NEIGRIHMS on the ground that sufficient evidence has been brought on record to show that the patient/accused is now medically fit and would require only medication.

12. The learned AAG has also submitted that the scope of this Court under Section 439 Cr.P.C would not cover the prayer for production of the accused/patient before the Medical Board.

13. Another submission raised by the learned AAG is the fact that in the instant application, the petitioner has made an averment that one of the co-accused in the case has been released on bail on 19.05.2020 and as such, on ground of parity, the accused person may also be allowed to be enlarged on bail, however this aspect of the matter was not raised by the learned counsel for the petitioner at the hearing, but has instead stress only on the issue of the medical condition of the accused and as such, the State respondents would not advance any argument on this score.

14. I have duly considered the submissions made by the learned counsels for the rival parties and I have also perused the petition in hand. It is noticed that the petitioner has made a prayer for grant of bail on behalf of the accused person Shri. Sushen Das, however from the argument advanced by the learned counsel for the petitioner, the only ground relied upon by the petitioner is the ground of enlargement on bail on the basis of the sickness of the accused, which according to the petitioner is serious in nature.

15. From the contents of the affidavit filed by the State respondents, what can be seen is that the accused/patient Shri. Sushen Das was duly examined and admitted at the Civil Hospital, Tura on 01.06.2020 and on his condition having improved, he was discharged on 08.06.2020. He was advised to be under medication.

16. As pointed out by Mr. Paul, this Court vide order dated 29.05.2020 had directed that the accused be examined and the latest medical condition be reported to this Court which was duly complied with by the authorities concerned. There appears to be no violation of the said direction as contended by Mr. Paul and as such, the argument advanced in this regard cannot be accepted by this Court.

17. It is also noticed that the medical report has clearly shown that as on date, the accused/patient is fit to be kept under custody, however if there is any complaint from his end, he is at liberty to inform the medical officer in station who is hereby directed to ensure that the best possible medical attendance is accorded to the accused/patient.

18. This being the case, the fact that the charge sheet has already been filed in the case, the consideration for grant of bail cannot be entertained by this Court at this stage, taking into account the nature of the case, the gravity and seriousness of the alleged offence and the possibility of the accused tampering with the evidence and witnesses.

19. In view of the above, this application is hereby rejected. Petition disposed of. No cost.

20. Registry is directed to return the C.D to the learned GA.

Judge

Meghalaya
16.06.2020
"D. Nary, PS"