Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 5 of 2020

Date of Decision: 07.07.2020

Smti Reshmi Biswas Vs. State of Meghalaya

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. P. Yobin, Adv.
For the Respondent(s) : Mr. H. Kharmih, Addl. PP.

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

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

1. On 11.06.2020, an FIR was lodged before the Officer-In-charge Rynjah Police Station, East Khasi Hills District, Shillong, on a specific complaint against Dr. Jhutan Choudhury, a medical doctor in the department of General Medicine, NEIGRIHMS.

2. The complaint relates to an alleged incident of molestation by the above named doctor in separate incidents against two ladies who had gone for medical checkup and was treated by the said doctor at the OPD, NEIGRIHMS.

3. On receipt of the said FIR, the Officer-In-charge accordingly registered a police case being Rynjah P.S Case No. 70 (06) 2020 under Section 354 A (1) (i)/354B IPC and a woman police Sub-Inspector was assigned to complete the investigation.

4. On launching of the investigation, the doctor/accused was arrested and detained in custody.

5. The accused person thereafter, caused an application seeking bail to be moved at the first instance before the Court of the learned Judicial Magistrate First Class, East Khasi Hills, Shillong on 13.06.2020, which application under Section 437 Cr.P.C was duly rejected by the Court vide order dated 15.06.2020.

6. Thereafter, the accused moved a second bail application under Section 439 Cr.P.C before the Court of the learned Addl. Deputy Commissioner (J), Shillong. The Court after hearing the parties vide order dated 23.06.2020, had rejected the bail application.

7. Under the circumstances, the petitioner who is the wife of the accused/doctor had then preferred an application under Section 439 Cr.PC before this court with a prayer to enlarge the accused person namely, Dr. Jhutan Choudhury on bail in connection with Rynjah P.S Case No. 70 (6) 2020 under Section 354 A(1) (i)/354B IPC.

8. Heard Mr. P. Yobin, learned counsel for the petitioner who had submitted that a look at the FIR would show that on the basis of vague allegation, the police have registered the aforementioned Rynjah P.S Case, in gross violation of the principle laid down by the Hon'ble Supreme Court in the case of ***Arnesh Kumar v. State of Bihar and Anr: (2014) 8 SCC 273.***

9. It is also submitted that there is no iota of ingredient of assault or use of criminal intent to disrobe the alleged victims and the accused person who is a medical practitioner in one of the most reputed hospital in the region and who has been performing his duties sincerely and with utmost dignity, has been detained by the police, thereby infringing on his rights as guaranteed under Article 21 of the Constitution of India.

10. Learned counsel for the petitioner has also further submitted that a look at the antecedent of the accused would show that he is a professional medical practitioner who is dedicated to his practice and his attendance can be easily secured to face further investigation and trial. He is also able to

provide solvent sureties who are willing to stand as guarantors for him to ensure that he cooperates with the investigation and trial.

11. Besides this, it is also submitted that the I/O has completed the recording of statement under Section 161 and 164 Cr.P.C of the alleged victims as well as witnesses and as such, there is no question of tampering of witnesses by the accused, if enlarged on bail.

12. Another limb of the submission of the learned counsel for the petitioner is that this Court is brought to notice that the wife of the accused is at an advanced stage of pregnancy and she is unwell and is staying in the official quarters alone and as such, on compassionate ground, this Court may be pleased to consider the prayer of the petitioner.

13. To support his case, the learned counsel for the petitioner has cited the case of ***Arnesh Kumar (supra),*** the case of ***Joginder Kumar v. State of U.P and Ors: (1994) 4 SCC 260*** and also the case of ***Dataram Singh v. State of U.P and Anr: (2018) 3 SCC 22***.

14. To counter the submission and contention of the learned counsel for the petitioner, the State respondent appearing through Mr. H. Kharmih, learned Addl. P.P has submitted that a look at this case, would show that the accused is a very influential person and a person of authority, who has misused his power and position by committing the alleged offence on two victims separately within a space of a few hours at the same place of occurrence, the victims being illiterates who were taken advantage of.

15. It is also the submission of the learned Addl. P.P that the accused person is not a permanent resident of Meghalaya, and if enlarged on bail, there is every possibility that he may abscond and will not co-operate with the investigation.

16. As to the allegation that compliance under Section 41 Cr.P.C has not been complied with by the police, the learned Addl. P.P has submitted that on perusal of the order passed by the learned Addl. Deputy Commissioner

(J) Shillong, dated 23.06.2020 at paragraph 19 of the same, it was observed that the police had enclosed a check list as mandated under Section 41B Cr.P.C and as such, there is no truth in the said allegation.

17. It is therefore prayed that this application may be rejected as devoid of merits.

18. I have considered the argument of the learned counsels for the parties and have also perused the case dairy which was produced before this Court, to understand the genesis and the progress of the case.

19. The facts and circumstance of the case need not be repeated as the same was mentioned above.

20. With reference to the case of the accused person, the learned counsel for the petitioner has cited three authorities to bring home the point that the police have arrested the accused person without reasonable justification (as was held in ***Joginder Kumar's case***) and that no arrest should have been made without reasonable satisfaction reached after some investigation as to the genuineness of the allegation (***Arnesh Kumar's case***) and also that a fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty ***(Dataram Singh's case***) which principles are applicable, as far as the accused doctor is concerned and as such, the prayer for grant of bail is valid.

21. Before deciding in this matter, a re-statement of the salient features and principles governing consideration for grant or refusal of bail and the application of judicial discretion is required to be briefly innumerated herein.

22. In the case of ***Gudikanti Narasimhulu and Ors v. Public Prosecutor, High Court of Andhra Pradesh: (1978) 1 SCC 240***, the Apex Court while defining the concept of "Judicial Discretion" in paragraph 3 and 4 has held as under:

> **"*3.*** *What, then, is 'judicial discretion' in this bail context? In the elegant words of Benjamin Cardozo, The Nature of the*

Judicial Process – Yale University Press (1921).

The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life. Wide enough in all conscience is the, field of discretion that remains."

Even so it is useful to notice the tart terms of Lord Camden that, 1 Bovu. Law Dict., Rawles' III Revision, the discretion of a Judge is the law of tyrants: it is always unknown, it is different in different men; it is casual, and depends upon constitution, temper and passion. In the best, it is oftentimes caprice; in the worst, it is every vice, folly and passion to which human nature is liable . . . .

4. *Some jurists have regarded the term 'judicial discretion' as a misnomer. Nevertheless, the vesting of discretion is the unspoken but inescapable, silent command of our judicial system, and those who exercise it will remember that, Attributed to Lord Mansfield, Tingley v. Dalby, 14 NW 145, discretion, when applied to a Court of Justice, means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful, but legal and regular.*

An appeal to a Judge's discretion is an appeal to his judicial conscience. The discretion must be exercised, not in opposition to, but in accordance with, established principles of law, Judicial discretion, (ibid.) p. 33".

23. On this premise, the application of judicial discretion as regard consideration for grant for refusal of bail is well settled in our criminal jurisprudence and vindicated by a catena of judgments pronounced by the Supreme Court as well as High Courts of our country.

24. In the case of ***State of UP through CBI v. Amarmani Tripathi: (2005) 8 SCC 21*** at paragraph 18, the Hon'ble Supreme Court has held that:

"18. *It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v)*

character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course of justice being thwarted by grant of bail [see Prahlad Singh Bhati vs. NCT, Delhi and Gurcharan Singh v. State (Delhi Admn)]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in Kalyan Chandra Sarkar vs. Rajesh Ranjan; (2004) 7 SCC 528 (SCC pp. 535-36, para11)

> *"11. The law in regard to grant or refusal of bail is very well settled. 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 merit 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. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:*
>
> *(a) The nature of accusation and the 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.*
>
> *(c) Prima facie satisfaction of the court in support of the charge.*

(See Ram Govind Upadhya v. Sudarshan Singh, (2002) 3 SCC 598 and Puran v. Rambilas, (2001) 6 SCC 338.) ''

25. These principles have been re-stated in the case of ***Sangitaben Shaileshbhai Datanta v. State of Gujarat and Another: (2018) SCC Online SC 2300***, wherein at paragraph 6 of the same, the Apex Court has held that:

> ***"6.*** *…….. While adjudicating a bail application, Section 439 of the Code of Criminal Procedure, 1973 is the guiding principle wherein the court takes into consideration, inter alia, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses,*

the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds. Each criminal case presents its own peculiar factual matrix, and therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. However, the court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police, or rather order specific tests as done in the present case…"

26. On perusal of the case diary, it is seen that the Investigating Officer has approached the case meticulously and has recorded the statement of the victims under Section161 Cr.P.C and has also caused their statements to be recorded under Section 164 Cr.P.C. A number of witnesses have also been examined by the I/O.

27. From the statement of the victims, this Court is convinced that a prima facie case is made out against the accused, since this court is not required to undertake a meticulous examination of the evidence collected by the police, suffice it to say that the conduct of the accused/doctor has all the trappings of a person of influence and power and taking advantage of his position, which if enlarged on bail at this stage, would hamper further investigation and can also be a source of intimidation and tampering of vital witnesses in this case.

28. This being the case, I am of the considered opinion that at this juncture, this instant application for grant of bail cannot be considered. The same is hereby rejected.

29. Registry is directed to take steps for return of the Case Diary.

30. Application disposed of. No cost.

Judge

Meghalaya
07.07.2020
"N.Swer, Stenographer"