Serial No. 04
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 13 of 2020 with
BA. No 14 of 2020

Date of Decision: 25.09.2020

Shri. Narayan Hajong Vs. State of Meghalaya.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. R. Kar, Adv.
For the Respondent(s) : Mr. H. Kharmih, GA.

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

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

1. This matter has been taken up today via video conferencing.

2. Being similar in nature and arising out of the same case, this Court deems it convenient and expedient to take up these two bail applications and to dispose them vide this common order.

3. The factual aspect of the case referred to by the petitioner is that of an incident which occurred on 28.02.2020 at Ichamati under Shella Police Station when, after a meeting organized by an NGOs, Viz; the KSU, at about 4.30 PM or so, a group of people armed with sticks, machete, iron rods etc. suddenly came and attacked the members of the KSU, as a result of which many of them were injured and one person eventually succumbed to his injuries.

4. In this connection, an FIR was lodged on 28.02.2020 by the President and Secretary KSU, South Khasi Hills Unit upon which the said Shella P.S case No. 9(2) 2020 was registered and on 29.02.2020 a number of suspects were arrested, including Shri. Bimol Hajong and Shri. Debraj Hajong represented by the petitioner herein.

5. It may be mentioned that after investigation was launched, the I/O carried on the process of investigation and in due course filed the Charge Sheet dated 24.05.2020 before the Court of the learned Judicial Magistrate First Class(JMFC), Sohra, East Khasi Hills District and a case being G.R. Case No. 8(6) 2020 was registered. The case is reportedly at the stage of appearance of some accused and supply of copies to some of them.

6. Mr. R. Kar learned counsel for the petitioner has submitted that he may be allowed to advance argument first in the case of BA. No. 14 of 2020 as the circumstances related to the accused Debraj Hajong are similar to the circumstances as can be found in BA. No. 7 of 2020 disposed of by this Court vide Order dated 31.08.2020.

7. In this regard, learned counsel for the petitioner has submitted that since the accused Debraj Hajong was charge sheeted under Section 148/506 IPC, both sections being bailable under the Cr.P.C except for Section 506 which was made non-bailable in the State of Meghalaya and since this Court under similar circumstances has allowed the accused persons who have sought bail in the said BA. No. 7 of 2020, therefore on the principle of parity, the accused Debraj Hajong may also be enlarged on bail with any conditions to be imposed by this Court.

8. As regard BA. No. 13 of 2020, where the accused Bimol Hajong is involved and as per the Charge Sheet, he has been charged inter alia under Section 302 IPC, Mr. Kar has submitted that he will leave it to the discretion of this Court to pass necessary order.

9. Also heard Mr. H. Kharmih, learned GA on behalf of the State

respondent who has submitted that bail may not be considered to the accused persons in these two applications, inasmuch as, releasing them might lead to another riot as it involved public peace and tranquility and the matter is very sensitive since two group of people are involved.

10. Another submission made by the learned GA is that the accused persons appears to have been from Bangladesh and therefore, there is the likelihood that they might flee to Bangladesh as they are illegal migrants and as such, their documents have to be examined.

11. On the charges made against the accused Debraj Hajong, the learned GA has submitted that there is a prima facie case against him and the charges could be altered by the Court, while with regard to the charges against the accused Bimol Hajong, the charges being serious in nature, the same has to be considered by this Court.

12. It is finally submitted that grant of bail to the accused persons above named may not be allowed by this Court at this juncture.

13. On consideration of the submission made, this Court has also perused the records and the case dairy produced and on going through the same, it is noticed that the accused Debraj Hajong was also part of the rioting mob on the date of the incident on 28.02.2020 at Ichamati. However, since his actual role in the same has not been clearly described by the witnesses examined by the I/O, therefore the charge against him was only under Section 148/506 IPC. Considering the severity of the punishment to be inflicted on him, in case he is convicted, the maximum period would be in the region of 7 years or less. As was observed by this Court in BA. No. 7 of 2020 vide Order dated 31.08.2020, this Court is of the considered opinion that a case of parity is made out.

14. Parity apart, the contention of the learned GA that the charges can or may be altered in course of trial, in the opinion of this Court could not be accepted as that would mean that this Court has to enter into the realm of

speculation, which is not legally tenable. Therefore, the same is turned down.

15. In view of the above, the prayer of the petitioner in BA. No. 14 of 2020 is hereby allowed and the accused Debraj Hajong is granted bail on the following conditions:

i. That the accused person shall not abscond or tamper with the evidence and witnesses.
ii. That he shall diligently appear in Court as and when required.
iii. That he shall not leave the jurisdiction of India without prior permission from the Court concerned.

16. The accused person is also directed to execute a personal bond of ₹50,000/- (Rupees fifty thousand) only with one surety of like amount to the satisfaction of the Trial Court.

17. The learned Trial Court is hereby directed to issue notice of release of the accused person above named on being satisfied with the bail bonds etc., produced before it.

18. **In BA. No. 13 of 2020,** the petitioner have moved bail on behalf of the accused Bimol Hajong who is charged inter alia, under Section 302 IPC. This is indeed a very serious charge which carries the stringent punishment of imprisonment for life, if convicted. On perusal of the records, including the case dairy, it is seen that a number of witnesses have placed the accused herein at the place of incident and his role in the riot has been alleged to be substantial. This would lent credence to the allegation in the Charge Sheet that there appears to have been a strong prima facie case against the accused, including an offence under Section 302 IPC.

19. As was held in BA. No. 11 of 2020, it is the considered opinion of this Court that at this juncture, taking every aspect of the matter into consideration, the accused Bimol Hajong is not entitled to be enlarged on bail.

20. It is made clear that the observations expressed above is in the context

of the application for bail and should not in any way be the point of consideration for any of the parties in course of trial, for which the trial would be at liberty to come to its own findings and conclusions on the basis of the evidence and materials on record.

21. BA. No. 13 of 2020 is hereby rejected as devoid of merits.

22. The case diary, charge sheet and relevant documents produced by the State respondent is directed to be returned accordingly.

23. These two bail applications are accordingly disposed of. No cost.

Judge

Meghalaya
25.09.2020
"D. Nary, PS"