Serial No. 01 to 03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 30 of 2020 with
BA. No. 31 of 2020 and
BA. No 32 of 2020

Date of Decision: 01.12.2020

Smti Ratna Dutta	Vs.	State of Meghalaya.
Smti Seema Paul	Vs.	State of Meghalaya.
Smti Ratna Dutta	Vs.	State of Meghalaya.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Ms. R. Kharshiing, Adv. vice
Mr. K. Ch. Gautam, Adv.

For the Respondent(s) : Mr. N.D. Chullai, AAG. with
Ms. I. Lyngwa, GA.

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

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

1. These matters have been taken up via video conferencing.

2. Shella P.S. Case No 9 (02) 2020 under Sections 148/506/302/34 IPC read with Section 3 of the PDPP Act, was registered in response to an FIR lodged on 28.02.2020 by the President and Secretary KSU, South Khasi Hills Unit relating to an incident which occurred on 28.02.2020 at Ichamati under Shella Police Station when, after a meeting organized by the Khasi Student Union(KSU), at about 4:30 P.M 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.

3. After investigation was launched, the Investigating Officer submitted a Charge Sheet dated 24.05.2020 before the Court of the Judicial Magistrate First Class at Sohra in the East Khasi Hills District under G.R. Case No. 8(6) of 2020.

4. It may be mentioned that in course of investigation, several persons were arrested and eventually, on being charge sheeted, the I/O has found evidence to book some of them under some sections of law and some under another set of sections mostly under the Indian Penal Code.

5. The accused person Shri Sushil Dutta represented by Smti. Ratna Dutta, the Petitioner in BA. No. 30 of 2020 was arrested on 26.05.2020 and was charged sheeted under Sections 148/506/302/34 IPC r/w Section 3 of PDPP Act.

6. The accused person Shri. Sanjit Das represented by Smti Seema Paul, the Petitioner in BA. No. 31 of 2020 was arrested on 28.03.2020 and was charged sheeted under Sections 148/506/302/34 IPC r/w Section 3 of PDPP Act.

7. Again, the accused person Shri. Sumon Dutta represented by Smti Ratna Dutta the Petitioner in BA. No. 32 of 2020 was also charged sheeted under Sections 148/506/302/34 IPC r/w Section 3 of PDPP Act

8. As stated above, these three applications being similar applications for grant of bail under Section 439 Cr.P.C., inasmuch as, they relates to the same incident which occurred on 28.02.2020 at Ichamati, Shella and as such, it is deemed expedient to pass a common order in this regard.

9. Heard Ms. R. Kharshiing, learned counsel for the Petitioners who have firstly related the history of the case registered and the allegation against the accused persons above named and has submitted that the charge sheet have been filed in this matter and the same is in the process of being committed

to the Sessions Court.

10. However, it is also submitted that the case has not yet proceeded for trial and considering the fact that it is not almost 8(eight) months and a large number of witnesses cited, the prospect of speedy trial is very remote.

11. The learned counsel, in support of her contention has relied upon the case of ***Sanjay Chandra v CBI: (2012) 1 SCC 40*** paragraph 21 and also in a case disposed of by this Court being BA. No. 9 of 2019 at paragraph 22.

12. The learned counsel has therefore made a prayer for grant of bail to the three accused persons named above and has also undertaken to abide by any conditions as deemed fit and proper to be imposed by this Court.

13. Mr. N.D. Chullai, learned AAG assisted by Ms. I. Lyngwa, learned GA have submitted that all the three related applications for grant of bail on behalf of the respective accused person concerns charges under Section 302 IPC amongst others and as such, the decision of this Court in a related case being BA. No. 9 and BA. No. 10 of 2020 dated 25.09.2020 will cover the issue present in these instant applications, wherein this Court have refused to concede to the prayer of the Petitioners therein for grant of bail.

14. It is therefore the submission of the learned AAG that these applications are devoid of merits and are therefore liable to be dismissed by this Court.

15. The submission of the learned counsels for the parties have been duly noted and considered. Before deciding on the prayer of the Petitioners, it would be appropriate to discuss the concept of judicial discretion as this is a material consideration upon which will tilt the balance as to whether the accused persons are entitled to the relief of being set free from custody for the time being or whether it justifies their continuance in custody, of course based on the facts and circumstances of the particular case.

16. As to the interpretation of the concept of judicial discretion, at this

juncture, it is worth recapitulating what has been propounded by the Hon'ble Supreme Court in the case of ***Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh:(1978)1 SCC 240*** wherein it has observed thus:

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

17. In the context of the above, when a Court applies discretion to a case in hand, particularly when a very sacred issue of personal liberty is involved, consideration for grant or refusal of bail has to be, again in the words of the Hon'ble Supreme Court in the case of ***Gudikanti Narasimhulu (supra)*** at paragraph 5, wherein it was observed that *"... whether it is probable that the defendant will appear to take his trial...."*

> *The test should be applied by reference to the following considerations:*
>
> *(1) The nature of the accusation……*
>
> *(2) The nature of the evidence in support of the accusation….*

(3) The severity of the punishment which conviction will entail...

(4) Whether the sureties are independent, or indemnified by the accused person.... "

18. Again, at paragraph 6 of the said ***Gudikanti case,*** the Hon'ble Supreme Court has referred to the setting down of the order of priorities to be listed as:

> ***"6.*** *....I do not think that an accused party is detained in custody because of his guilt, but because there are sufficient probable grounds for the charge against him as to make it proper that he should be tried, and because the detention is necessary to ensure his appearance at trial....It is a very important element in considering whether the' party, if admitted to bail, would appear to take his trial; and I think that in coming to a determination on that point three elements will generally be found the most important : the charge, the nature of the evidence by which it is supported, and the punishment to which the party would be liable if convicted.*
>
> *In the present case, the charge is that of wilful murder; the evidence contains an admission by the prisoners of the truth of the charge, and the punishment of the offence is, by law, death."*

19. As stated above, on perusal of the case dairy, what is seen is that the Investigating Officer has examined a large number of witnesses and has also recorded the statement of the arrested accused persons under Section 161 Cr.P.C. Almost all the witnesses have confirmed that the riot had taken place at Ichamati. Some of these witnesses are eyewitnesses who has seen a large mob armed with sticks and dangerous weapons advancing towards the place where the meeting of the KSU had taken place and thereafter, there was a scuffle between the two groups. It is on record that some of the witnesses have also identified some of the rioters who had a hand in the deadly assault of the victim, who later succumbed to his injuries, which includes the names of those accused persons for whom these bail applications have been preferred.

20. This Court has also considered the authority cited by the learned counsel for the Petitioner that is, the case of ***Sanjay Chandra v CBI (supra)***

as well as the order passed by this Court in BA No. 9 of 2019 which basically speaks about the satisfaction of the Court to secure the appearance of the accused person at his trial by a reasonable amount of bail and which also speaks about the liberty of a person to be considered, deprivation of which may be considered as punishment and that every man is deem to be innocent until duly tried and duly found guilty.

21. However, the Apex Court in the said ***Sanjay Chandra case*** at paragraph 40 has re-emphasised the aspect of discretionary powers of the Court as far as grant or refusal of bail is concerned, which is regulated to a large extent by the particular facts and circumstances of a case.

22. Viewed thus, it appears that the accused persons named above are found to be involved in the murder of the said victim based on prima facie evidence and as such, taking into account the severity of the nature of the offence and the likely punishment it would entail, if it ended in conviction, a reasonable apprehension that if enlarged on bail at this stage, they may flee from participating in the judicial process is well founded therefore, the application of judicial discretion would leaned on the side of their continuance in custody to secure their presence at the trial.

23. This being the case, this Court is of the considered opinion that the prayer for grant of bail on behalf of the accused persons above named is too premature at this stage.

24. Resultantly, these applications are bereft of merits and are hereby rejected.

25. The case diary, charge sheet and relevant documents produced by the State respondent are to be sent back to the Court concerned.

26. It is made clear herein that the observation and findings of this Court as noted above are at the preliminary stage and based on prima facie evidence, which would then be subjected to be scrutinized in Court and

challenged and as such, the trial court is well advised to proceed with the trial without being influenced by the observations made herein, which are made only for the purpose of consideration of bail.

27. With the above, these applications are hereby disposed of by this common order. No cost.

Judge

Meghalaya
01.12.2020
"D. Nary, PS"

