Serial No. 13
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 35 of 2020

Date of Decision: 15.12.2020

Miss Aguwendu Stephanie Uchechi Vs. State of Meghalaya & 2 Ors. & 2 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S.P. Mahanta, Sr. Adv. with
Ms. M. Wahlang, Adv.

For the Respondent(s) : Mr. S. Sengupta, Addl. PP. for R 1-3.

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

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

1. This matter was taken up via Video Conferencing.

2. This is an application under Section 439 (1)(b) Cr.P.C preferred by the Petitioners herein who are currently in custody and lodged at District Jail Jowai, West Jaintia Hills.

3. Heard Mr. S.P. Mahanta, learned Sr. counsel assisted by Ms. M. Wahlang, learned counsel who has submitted that the Petitioners are Nigerians by nationality and were arrested on 07.09.2020 in connection with Amlarem P.S Case No. 9(9)2020 U/S 3(a), 14(c), 14C of the Foreigners Act, 1946.

4. According to the FIR lodged by Sub-Inspector A. Wahlang, on 07.09.2020 on a routine check by the police at Amlarem, one vehicle bearing

registration No. ML-05-Q-3104 was stopped for checking and the police party found that there were four occupants inside the vehicle, three of which seems to be of African descent. The said foreigners, two of which are female were detained at the Police Station and a case was registered against them.

5. In course of investigation, a prima facie case was found well established against them and accordingly, they were booked under Section 3(a)/14(c)/14 C Foreigners Act, primarily for entering into India without any valid documents or Visa. A regular case was accordingly registered as G.R Case No. 77/2020 in the Court of the learned Judicial Magistrate First Class, Amlarem Sub-Division.

6. On 09.11.2020 the learned Judicial Magistrate First Class, Amlarem Sub-Division considering the bail application filed on behalf of the accused persons/Petitioners herein, has accordingly enlarged them on bail on certain conditions.

7. Learned Sr. counsel for the petitioners has further submitted that the Petitioners are law abiding citizens and are ready to abide with all the conditions imposed by the Court. However, exception is taken to the first condition i.e ***"that the accused shall furnish a bond of ₹ 50,000/- and two reliable local sureties each of the like amount"*** inasmuch as, the Petitioners being strangers and foreigners have no local relations or contact and as such, it is practically impossible to get two local sureties.

8. The learned Sr. Counsel has further submitted that if the prayer of the Petitioners is allowed, the said condition may be set aside, however, condition may be imposed to allow them to deposit cash bond as provided under Section 445 Cr.P.C or to direct them to report to the local police authorities every alternate day or to impose any other condition in lieu of the condition pointed above.

9. To support his contention, the learned Sr. Counsel has cited the case of ***Lambert Kroger v. Enforcement Directorate: 2000 CriLJ 2125*** and the case

of ***Mohammed Kunju & Another v. State Of Karnataka: AIR 2000 SC 6*** and has submitted that from the above cases, the Court has held that bail cannot be withheld, even if the accused is a foreigner, however, imposition of condition including withholding of passport will suffice.

10. It is therefore prayed that this application may be allowed and the bail condition as indicated may be modified accordingly.

11. Mr. S. Sengupta, learned Addl. PP though not vehemently opposing the prayer of the Petitioners has however submitted that the said bail condition in question may be modified only to the extent that instead of two local sureties, the number of local sureties may be reduced to one.

12. Having heard the submissions and contentions of the learned counsels for the rival parties and on perusal of the impugned order, it is seen that the Petitioners herein have raised no objection to conditions No. 2 to 6 imposed by the learned Judicial Magistrate First Class, Amlarem, but has expressed inability to comply with the first condition as indicated above.

13. It is logical to understand that the Petitioners are admittedly foreign nationals who have ventured into India in violation of the law of the land. It is not for this Court to discuss about the motive of the alleged adventure, however, it can be presumed that being foreigners and total strangers to the land and its inhabitants, it is not expected of them to be able to furnish two local sureties to bail them out.

14. In the case of ***Lambert Kroger v. Enforcement Directorate (supra)*** at paragraph 8, the Court has observed that *"...Admittedly the petitioner's passport is with the respondent and ordinarily the petitioner cannot leave the country without the passport. Though the possibility of fleeing from trial may be more in the case of a foreign national, it cannot be said that an accused cannot be granted bail merely because he is a foreign national..."*

15. From the records, it is noticed that the passports of the Petitioners have been seized and as such, they are effectively in the custody of the Court of the

concerned authority. In the light of the observations made in the ***Lambert Kroger case***, this Court is also inclined to believe that the Petitioners herein, even if enlarged on bail without sureties are within the bounds of the jurisdiction of the Court and as such, are compelled to comply with the direction of the Court.

16. In the event, this Court is persuaded to allow this instant application.

17. Accordingly, the condition No. 1 imposed by the learned Judicial Magistrate First Class in G.R Case No. 77/2020 vide order dated 09.11.2020 is hereby modified to the extent that the same is set aside and quashed and in lieu thereof, the Petitioners are directed to deposit a sum of ₹ 10,000/- (Rupees ten thousand) each as provided under Section 445 Cr. P.C.

18. Registry is directed to issue copy of this order upon the learned Judicial Magistrate First Class, Amlarem Sub-Division, who shall ensure that the Petitioners comply with the direction as above and upon due compliance to cause release of the Petitioners forthwith.

19. With the above, this application is hereby disposed of. No cost.

Judge

Meghalaya
15.12.2020
"N. Swer, Stenographer"