

HIGH COURT OF MEGHALAYA
AT SHILLONG

B.A. No 2 of 2020

Date of Decision: 21.04.2020

Smti Dabiang Lamare

Vs.

State of Meghalaya & 3 Ors.

Coram:**Hon'ble Mr. Justice W. Diengdoh, Judge****Appearance:**

For the Petitioner

: Mr. K. Paul, Adv.

For the Respondent(s)

: Mr A. Kumar, Advocate General with
Mr. A. Kharwanlang, G.A.

i)	Whether approved for reporting in Law journals etc.:	No
ii)	Whether approved for publication in press:	No

- The Petitioner is the sister of the accused Shngain Lamare who is presently in judicial custody in connection with Saipung P.S. Case No 26(5)14 since registered as Session Case No 02/2015.
- It is the averment of the Petitioner that the accused was arrested on 26/06/2014 and was remanded to judicial custody since then, even after the expiry of the mandatory 90 days period which ended on 24/09/2014, the police having failed to complete the investigation then.
- The Petitioner has also stated that the other co-accused has already been released on bail by the Trial Court and as such, this petition is made with a prayer for release of the accused on the ground of parity.
- It was pointed out that in the meantime, the family of the accused, of which he is the sole earning member, consisting of his wife and two minor children has suffered irreparable loss and injury, without any financial support, even to the extent of being unable to afford proper legal representation to the accused.

5. Mr K. Paul, Learned Counsel for the Petitioner has submitted that in such a time like this, with the scare of corona virus pandemic touching even the village where the family members of the accused are residing, the wife of the accused as stated above is suffering from lack of bare necessities affecting even the wellbeing of their two minor children.
6. It is the submission of the Learned Counsel for the Petitioner that the accused has been in custody for the last seven years and as such, he may be released on bail with any conditions to be imposed, which will be duly complied with by the accused as he has got movable and immovable property and is a permanent resident of Umkyrpong village in the District of East Jaintia Hills.
7. Also heard the Learned Advocate General Mr A. Kumar who has submitted that at the outset, the Petitioner not having place a copy of the FIR and Chargesheet or any other part of the Trial Court record and that no mention was made before this Court as to whether the Petitioner has moved any application for bail either before this Court or the Trial Court and as such, this appeal before this Court is not maintainable and is liable to be dismissed.
8. It is also the contention of the Learned Advocate General that the Order dated 09.05.2019 passed by the Learned Trial Court while rejecting the bail application of the accused was done so taking into account the serious nature of the offence.
9. While referring to a number of judgments rendered by the Hon'ble Supreme Court of India on the related subject, the Learned Advocate General has led this Court to the case reported in (1978)1 SCC 240, paragraphs 7 & 8, (2004) 7 SCC 521 at Paragraphs 6 & 7, (2008) 16 SCC 753, Paragraphs 11to 14 and 27 and also the Order dated 23.03.2020 passed by the Apex Court in Suo Motu PIL No 1/2020(supra), and has submitted that in a similar strain, the Apex Court in the cases referred herein has held and opined that though power to grant bail under Section 439 Cr.P.C. by the High Court is of a wide amplitude, the grant of bail being a discretionary order, the

same has to done in a judicious manner, the nature of the offence being one of those basic considerations- the more heinous is the crime, the greater is the chance of rejection of bail, though, however, dependent on the factual matrix of the matter. Other factors to be considered are the danger of the accused absconding, tampering with the evidence and intimidation of the witnesses if released on bail.

10. The Learned Advocate General has also submitted that even the Hon'ble Supreme Court while considering the matter of release of prisoners in the wake of the Corona virus scare in the Country vis-à-vis overcrowding in jails, has restricted the directions for those liable to be released, to be determined by the High Powered Committee, only to those where the prescribed punishment is up to 7 years or less.
11. In view of the above, it is prayed that this instant bail application is bereft of merit and the same is liable to be dismissed.
12. Upon hearing the learned Counsels for the parties, it is also noticed that apart from this instant petition, the Petitioner has also filed an additional affidavit bringing on record the Order dated 09.05.2019 passed by the Learned Sessions Judge, West Jaintia Hills District, whereby the prayer for grant of bail on behalf of the accused was rejected, the same being referred to by the Learned Advocate General.
13. A perusal of the said Order dated 09.05.2019 would reveal that the sole ground for rejection of the bail application was that the case is serious in nature and that the accused has not been able to prove his innocence. It was also observed that the matter was at the stage of final argument with some co-accused having filed their written argument. The Learned Trial Court, vide order dated 24.04.2019, has also directed the parties to be ready for argument for fair trial and speedy justice.
14. The said Order dated 24.04.2019 has not been impugned in this instant petition, however, the fact that the matter was fixed for final argument sometime in April/May 2019 and even after a year or so, the same has not been concluded, speaks volume of the manner the trial

has proceeded, which, in the opinion of this Court has caused injustice to the accused as far as speedy trial is concerned.

15. Notwithstanding the nature of the offence, due consideration having been given to the citations referred to by the Learned Advocate General, which this Court is in agreement with the ratio enunciated therein, however, at this point of time, on the factual matrix of the case, it is clear that the matter is almost at the conclusion and if released on bail, there is no possibility of the accused to tamper with the evidence or to intimidate witnesses, which are, inter alia, usually the basis on which an application for bail is to be considered or not.

16. Another factor which must be weigh by this Court is the fact that under the present situation with the world, including India and Meghalaya doing their best to contain and combat the Corona Virus spread, the Hon'ble Supreme Court in Suo Motu Writ Petition(C) No 1/2020 IN RE: Contagion of COVID 19 in Prisons, vide Order dated 23.03.2020 has issued certain directions as regard the issue of overcrowding in prisons, vis-a vis the provision of Article 21 of the Constitution of India, to ensure that the spread of the corona virus is controlled, including constitution of a High Powered Committee to determine the release of prisoners and the category thereto.

17. Applying the principles of the Hon'ble Supreme Court's direction in the said PIL No 1 of 2020, as mentioned above, this Court is of the opinion that under the facts and circumstances of the case and in view of the observation made above, the prayer of the Petitioner has merit and the same is hereby allowed.

18. The accused Shngian Lamare is hereby directed to be released on bail on production of a personal bond of Rs 20,000/- with two sureties of like amount to the satisfaction of the Trial Court and further that :

(i) He shall not abscond

(ii) He shall be present on each and every date the case is taken up.

19. The learned Sessions Judge, West Jaintia Hills District is hereby directed to issue an order of release of the accused on presentation of the bail bonds and affidavits and the same being duly accepted.
20. Registry is directed to forward copy of this Order to the Learned Sessions Judge, West Jaintia Hills, Jowai for necessary compliance.
21. With the above, this petition is hereby disposed of. No cost.
22. Signed copy is placed on record.

Judge

Meghalaya
21.04.2020
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