

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 18 of 2023

Date of Decision: 20.07.2023

Shri. Pawan Bhama

Vs.

State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K.T.S. Tulsi, Sr. Adv. with
Mr. R. Singh, Adv.
Mr. K. Lyngdoh, Adv.

For the Respondent(s) : Mr. N.D. Chullai, AAG with
Ms. Z.E. Nongkynrih, GA
Ms. R. Colney, GA

ORDER (ORAL)

1. The case diary in connection with Shallang P.S. Case No. 39(12) 2022 as called for has been produced before this Court today and the same is accordingly perused.

2. This is an application under Section 439 Cr.P.C for enlarging the accused person, namely, Shri. Youdhistra Bhama preferred by the petitioner herein who is the uncle of the said accused person.

3. The events leading to the arrest of Shri. Youdhistra Bhamra started with the initiation of an FIR lodged by Shri. H. Kerwood Thabah, MCS ADC cum SDO (Civil), Mawshynrut Civil Sub-Division, West Khasi Hills District on 17.12.2022 before the Officer In-Charge, Shallang Police Station, West Khasi Hills District.

4. In the said FIR the informant has stated that on the strength of an order issued by the Deputy Commissioner, West Khasi Hills District dated 16.12.2022 to shut down all illegal coke factories operating in West Khasi Hills District which order is in compliance with this Court's order dated 16.12.2022 in PIL No. 14 of 2022, about 57 numbers of illegal coke plants were shut down though the names and identity of the owners of such coke plants was still unknown at that point of time.

5. Accordingly, on receipt of the said FIR the police registered Shallang P.S. Case No. 39(12) 2022 under Section 188/34 IPC read with Section 3(1)/21(1) MMDR Act read with Section 15 Environment (Protection) Act, Section 3 of the Explosive Substances Act and Section 53(1) of the Benami Transaction (Prohibition) Act, 2016 and investigation was launched.

6. In course of investigation, the complainant was examined and huge quantity of coal found at the site which is approximately 9000 MT and coke

of about 800 MT was seized from different locations of the said illegal coke factories. The Investigating Officer (I/O) has also caused issuance of notices under Section 41-A of the Code of Criminal Procedure, initially to about 31 persons who, in response to the said notice, appeared at Shallang Police Station and their respective statements was recorded under Section 161 Cr.P.C. On 29.05.2023 the I/O has again issued another batch of notices under Section 41-A Cr.P.C to another 47 suspected persons requiring their attendance at Shallang Police Station on 13.06.2023. Shri. Youdhistra Bhama was also one of those who were summoned and accordingly he appeared at the Police Station on the said date with his statement was also recorded under Section 161 Cr.P.C.

7. The I/O has again summoned Shri. Youdhistra Bhama to appear before him on 15.06.2023 and not being satisfied that he has fulfilled the conditions of notice under Section 41-A Cr.P.C, the I/O after explaining to him the reasons, has accordingly arrested him mainly on the ground that he be prevented to commit further offence and also that he is a habitual offender and more importantly to prevent the accused from causing the disappearance of evidence and also to safeguard the life and property of an important witness who has cited incriminating evidence against the accused.

8. Heard Mr. K.T.S. Tulsi, learned Sr. counsel for the petitioner who has submitted that, when it appears from the records that the accused person Shri. Youdhistra Bhama was cooperating with the I/O on being summoned in response to the notice under Section 41-A, therefore there is no reason why he has to be arrested. Secondly, all the sections of law which comprises the offences said to have been committed by the accused person are bailable in nature and as such, the accused person ought not to have been arrested in the case. Thirdly, since the accused person found that some key managerial personnel of Kalyani Fuel Ltd. were illegally running the coke plant at Shallang, he had also filed a cross FIR in this regard and as such, when there are cross FIRs, the accused person ought not to have been arrested in the case. Finally, it is submitted that when the offences are compoundable by the statutes, bail ought to have been granted.

9. In support of his contention, the learned Sr. counsel has referred to the following cases:

- i. Arnesh Kumar v. State of Bihar & Anr.: (2014) 8 SCC 273 paras 11.2, 11.3, 11.4, 11.5, 11.6, 11.7, 11.8 and 12;
- ii. Satender Kumar Antil v. Central Bureau of Investigation & Anr.: 2022 SCC Online SC 825, paras 23, 24 and 25;

- iii. Santosh v. State of Maharashtra: (2017) 9 SCC 714, para 6;
- iv. Sanjay Chandra v. Central Bureau of Investigation: (2012) 1 SCC 40, paras 39, 40 and 46;
- v. P. Chidambaram v. Directorate of Enforcement: 2019 SCC Online SC 1549, paras 23;
- vi. Sunil Bharti Mittal v. Central Bureau of Investigation: (2015) 4 SCC 609, paras 42, 43 and 44;
- vii. Nathi Lal & Ors. v. State of U.P. & Anr.: 1990 (Supp) SCC 145, para 2;
- viii. D.K. Shivakumar v. Directorate of Enforcement: 2019 SCC OnLine Del 10691, paras 34, 35, 36 and 38.

10. Per contra, Mr. N.D. Chullai, learned AAG appearing for State respondents has submitted that the accused person is a Director of Kalyani Fuel Ltd. which is a coke plant operating in the West Khasi Hills District, the same being operated illegally inasmuch as no necessary permission from the competent authority was ever issued as far as Consent to Establish (CTE) and Consent to Operate (CTO) are concerned. Therefore, on the strength of this Court's order dated 16.12.2022 in PIL No. 14 of 2022, the authorities have

taken necessary steps leading to the accused person Shri. Youdhistra Bhama to be finally arrested.

11. The learned AAG has further submitted that all the necessary formalities in compliance with relevant statutes and authorities of the Hon'ble Supreme Court have been complied with in the process of arrest of the said accused person. Initially, a notice under Section 41-A Cr.P.C was issued to him and he was summoned to the police station where his statement was recorded. On the basis of his statement and the relevant evidence collected in course of investigation the I/O has recommended Shri. Youdhistra Bhama be arrested. The reasons for such a course of action have been spelled out by the I/O which reasons, inter alia, includes the need to prevent the accused person from committing further offence and also from causing disappearance of evidence as well as the apprehension that he may tamper with the witnesses.

12. The learned AAG has further submitted that in compliance with the guidelines as was given in the case of D.K. Basu v. State of W.B.: (1997) 1 SCC 416, para 29 (sic 35) was duly complied with when the mother of the arrested person was informed of this fact.

13. In reply, the petitioner has submitted that the reasons cited by the I/O for which the arrest of the accused person is necessitated would not be

relevant as on date since about 35 days or so has passed when the accused person was arrested. Leading this Court to the relevant portion at page 40 of this application, the learned counsel for the petitioner has submitted that one of the reasons why the accused person was arrested is the fear of evidence disappearing. However, by now the I/O would have collected relevant evidence and there is no apprehension of tampering of such evidence.

14. As to the allegation that the accused person is a habitual offender, reference being made to Shallang P.S. Case No. 36 (12) 2022 under Section 506 IPC and Shallang P.S. Case No. 37 (12) 2022 under Section 324/506/307/34 IPC, it is submitted that the accused person in question has been granted bail in such cases and that there is no apprehension of his absconding or interference with the investigation as far as this case is concerned.

15. On point No. 3 at page 40 of this petition, the learned counsel has submitted that one of the grounds for the arrest of the accused person is that he has given a statement under Section 161 Cr.P.C indicating the involvement of a number of coal suppliers from Assam and their truck drivers, which, according to the I/O, if found to be true, is required to be investigated. This would mean that if there is a contrary finding, then the accused person would

have been unnecessary and illegally arrested.

16. This Court has given due consideration to the case of the respective parties, facts as indicated above need not be reiterated. Suffice it to say that what is required to be examined is whether the accused person Shri. Youdhistra Bhama has been arrested without any basis or that his arrest is in violation of relevant statutes or that his arrest is justified under the facts and circumstances.

17. At this juncture, it would be but proper to cite relevant authorities dealing with the issue of bail. Needless to say, it is well settled that in bail jurisprudence, the principle of 'bail and not jail' is still prevalent in the criminal justice system in our country. However, as far as the grant or non-grant of bail is concerned, it all depends on the particular facts and circumstances of a case before the court.

18. As indicated, there are guidelines and parameters governing the issue of bail set out by the Hon'ble Supreme Court in a catena of cases, some of which can be enumerated herein below as:

- (i) While granting bail the Court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support

of the accusations.

(ii) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the Court in support of the charge.

(iii) the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case has also to be considered.

(iv) whether the accused person is likely to abscond or to tamper with the evidence and witnesses, particularly if such witnesses are likely to be threatened.

19. Coming to the authorities referred to by the petitioner, in the case of Arnesh Kumar(supra) what is seen is that the Hon'ble Supreme Court has dealt with the provision of Section 41 and 41-A of the Cr.P.C and has reiterated the law laid down therein. Failure to comply with such provisions would invite the necessary implications for both the police officer and the Judicial Magistrate concerned. It is however noticed that the mandate of this judgment is confined only to cases where the punishment is for a period of less than seven years or upto seven years imprisonment if convicted. At the

relevant period when the I/O has just commenced the investigation, he has caused issuance of Notice under Section 41-A. In due course, it transpired that one of the offences is Section 3 of the Explosive Substances Act, 1908 which is a penalty provision for an offence of unlawful and malicious use of explosive substance likely to endanger life or cause serious injury to property and person carrying a sentence of imprisonment for life or rigorous imprisonment which shall not be less than ten years. Obviously, this is a non-bailable offence and as such, the assertion of the learned counsel for the petitioner that all the offences wherein the accused person in question is involved are bailable offences is not correct.

20. The case of Satender Kumar Antil(supra) inter alia, at para 22, 23 and 24 also speaks of or rather dealt with the aspect of Section 41 Cr.P.C wherein it was held that “...*There is no requirement of the aforesaid procedure when the offence alleged is more than seven years, among other reasons*”.

21. The proposition in the case of Santosh(supra) at para 6 of the same that the purpose of custodial interrogation is not just for the purpose of confession is indeed valid, however relating to the case of the accused person herein, it cannot be said that he was arrested only on the basis of his so-called

confession.

22. The case of Sanjay Chandra(supra) and the case of P. Chidambaram(supra) and also in the case of D.K. Shivakumar(supra), at the relevant paragraphs referred to by the petitioner speaks of the application of the principle of bail as has been referred to above.

23. As to the reliance in the case of Sunil Bharti Mittal at the paragraphs referred to by the petitioner that is, 42, 43 and 44 what could be understood is that an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company if there is sufficient evidence of his active role coupled with a criminal intent. At this point of time, only prima facie evidence is required to allow the I/O to take necessary steps, even to the point of arrest of the alleged offender and as such, it would be a matter of evidence at the trial to prove this aspect of the matter.

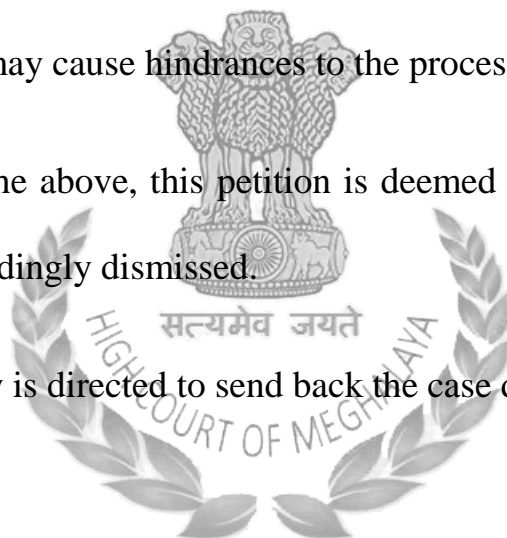
24. The case of State of M.P. v. Mishrilal and also the case of Nathi Lal v. State of U.P.(supra) was cited by the petitioner to prove a point that cross cases should be tried together. It is too early in the day to come to any conclusion that there are cross cases related to the same subject matter involving the accused person herein. It would however depend on the investigation by the I/O to come to any findings or conclusion on this aspect

but to say that such assertion is a ground for grant of bail cannot be fathom by this Court.

25. This Court has taken note of the matter in its entirety having considered the gravity and nature of the situation and is of the view that the custody of the accused person in question is justified for which the I/O should be given ample opportunity to complete his investigation, albeit within the mandatory period as prescribed by law since enlarging of the accused person at this point of time may cause hindrances to the process of investigation.

26. In view of the above, this petition is deemed to be devoid of merits and the same is accordingly dismissed.

27. The Registry is directed to send back the case diary.



Judge

Meghalaya

20.07.2023

"Tiprilynti-PS"