



THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Jurisdiction)

DATED : 7th OCTOBER, 2016

S.B. : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Bail Appln.No.08 of 2016

Petitioner : Shri Jacob Rai (Khaling),
Aged about 32 years,
S/ o Shri Dal Bahadur Rai,
R/ o Below Hotel Mayur,
P.O. & P.S. Gangtok,
East Sikkim.

versus

Respondent : State of Sikkim

Application for Bail under Section 438
of the Code of Criminal Procedure, 1973

Appearance

Mr. Sudesh Joshi and Ms. Tengop Subba, Advocates for the
Petitioner.

Mr. Karma Thinlay Namgyal, Additional Public Prosecutor with
Mr. S. K. Chettri and Mrs. Pollin Rai, Assistant Public Prosecutors
for the State on advance notice.

SI Slash Tamang, Investigating Officer, in person.

ORDER

Meenakshi Madan Rai, J

1. Heard.
2. Adverting to the allegations made out in the FIR against the
Petitioner, his Counsel in the first instance denies that the offence was at
all committed by the Petitioner. That, assuming but not admitting that



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such an offence had been committed, no physical injury was caused to the Officers named in the FIR being Senior IAS Officers of the Government of Sikkim who for their part have not lodged any joint or individual FIR in connection with the incident, but has been lodged as an afterthought by the Station House Officer, Sadar Police Station, who was present at the place of occurrence, although no arrests were carried out at the spot. That, he is the General Secretary of the principal Opposition Party in Sikkim, i.e., Sikkim Krantikari Morcha (SKM), and he along with his party members had expressed solidarity with former students of the Institute of Technology and Future Trends (ITFT), Chandigarh, who are agitating their demands in view of the non-recognition of their Degrees by the University Grants Commission, making them ineligible for higher studies, apart from which he has been raising issues on corruption in Sikkim. A meeting was held on 21-09-2016 in the Conference Hall at Manan Kendra, Gangtok, with the Chief Secretary of the Government of Sikkim and the two Officers named in the FIR, on conclusion of which the students demanded copies of the minutes of the meeting, which were denied to them. The students thus started raising slogans on which the Police intervened and forcibly removed them out of the Conference Hall and took them to Sadar Police Station. It is urged that the Petitioner at no time manhandled any of the officials present, this being evident from the fact that although the Police were present at the Manan Kendra, the Petitioner was not arrested despite the alleged offence. The acts of the Police officials are violative



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of the provisions of the fundamental rights enshrined in Articles 19 and 21 of the Constitution of India. That, presently he is admitted in the Central Referral Hospital (CRH), Tadong, Gangtok, and undergoing treatment. That, he is a permanent resident of Village Chumbung, Naya Bazar, West Sikkim, and apprehending arrest in connection with FIR dated 21-09-2016 under Sections 353/ 341/ 34 of the Indian Penal Code, 1860 (for short "IPC") lodged by PI Bijay Subba, Station House Officer of the Sadar Police Station, Gangtok, following which Sadar Police Station Case bearing No.330/ 2016 dated 21-09-2016 has been registered against him. He undertakes to cooperate with the Police in the investigation and that he is available at the Hospital for any information required from him. It is prayed that this Court pass an order granting anticipatory bail. To fortify his submissions, reliance was placed by Learned Counsel on the following decision;

- (i) ***Siddharam Satlingappa Mhetre vs. State of Maharashtra and Others*** : (2011) 1 SCC 694
- (ii) ***Shobhan Singh Khanka vs. State of Jharkhand*** : (2012) 4 SCC 684
- (iii) ***Hema Mishra vs. State of Uttar Pradesh and Others*** : (2014) 4 SCC 453
- (iv) ***Arnesh Kumar vs. State of Bihar and Another*** : (2014) 8 SCC 273 and
- (v) ***Bhadresh Bipinbhai Sheth vs. State of Gujarat and Another*** : (2016) 1 SCC 152.

3. Vehemently objecting to the submissions of Learned Counsel for the Petitioner, it was countered by Learned Additional



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Public Prosecutor that, the Petitioner is only seeking to draw political mileage of the entire situation as he is a member of the Opposition party and is inclined to give any agitation a political colour which likely will lead to a law and order situation. That, the Petitioner had indeed committed the offence alleged in the FIR and custodial interrogation of the Petitioner is required as otherwise it is likely that he would tamper with witnesses. Apart from that, the I.O. has to delve into questions of (i) whether the demand of the minutes of the meeting was made by the students or by the Petitioner (ii) whether the Petitioner was present at the meeting with the consent of the students or of his own accord and, (iii) ultimately the larger interest of the public has to be taken into consideration as a law and order situation could arise. That, presently there is a Criminal Case pending against the Petitioner in the Sessions Court, South District at Namchi, thereby indicative of the fact that he is a habitual offender. He relies on ***Bhagirath* vs. *State of Madhya Pradesh*** : 1981 (Supp) SCC 70 and ***K. K. Jerath* vs. *Union Territory, Chandigarh and Others*** : (1998) 4 SCC 80 and prays that this Application be rejected and dismissed. A copy each of the Section 161 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C."), statements of the Officers alleged to have been the victims have also been submitted before this Court.

4. I have heard the rival contentions of Learned Counsel and given due and anxious consideration to the same. I have also carefully



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perused the documents relied on by the parties and the citations made at the Bar.

5. I have given careful consideration to the Law relating to anticipatory bail as has been developed through the years by judicial interpretative process for which purpose I have meticulously perused the Judgements in ***Shri Gurbaksh Singh Sibbia and Others vs. State of Punjab*** : (1980) 2 SCC 565, ***Siddharam Satlingappa Mhetre*** (*supra*) and ***Bhadresh Bipinbhai Sheth*** (*supra*). I have also perused the indepth discussions made under Section 41 of the Cr.P.C. in ***Arnesh Kumar*** (*supra*).

6. Consequently, while considering a Petition under Section 438 of the Cr.P.C. what must, *inter alia*, weigh with the Court is the gravity of the offence, the severity of the penalty it entails and the requirement for custodial interrogation. This, of course, has to be balanced with the possibility of the Petitioner seeking to impede investigation on which count the Courts ought to be circumspect. In the instant matter, of the offences under which the Petitioner is booked, only one is a non-bailable offence which entails imprisonment for two years or fine or both.

7. It is not disputed that he has roots in society here, neither is there any apprehension on the part of the Prosecution that he will abscond so the question of his presence not being ensured during



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investigation or trial does not arise. It would be relevant to notice that the FIR was lodged on 21-09-2016 with no arrest made till date, which thereby allays the apprehension of absconsion. He is not guilty of an offence punishable with death or imprisonment for life as the offence under Section 353 of the Cr.P.C. entails a two year imprisonment or fine or both as already discussed, in addition to which he undertakes to cooperate with the investigation in the matter. The question of tampering with witness appears to be a little far-fetched as it is evident from the FIR that the students purportedly the witnesses in the case and the Petitioner do not appear to be at cross purposes, both having attended the meeting on a common agenda, i.e., on the point of non-recognition of the college degree as discussed supra. The allegation that he has criminal antecedents also boils down to a criminal case that is pending against him, the trial of which is still underway.

8. In the aforesaid facts and circumstances and the discussions herein, it is hereby Ordered that in the event of arrest of the Petitioner for the offences mentioned in the FIR, *supra*, he shall be released on bail on furnishing PB&SB of Rs.20,000/- (Rupees twenty thousand) only, each, subject to the following conditions;

- (i) He shall make himself available for interrogation by the I.O. as and when required.
- (ii) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of



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the case so as to dissuade him from disclosing such facts to the Court or to any Police Officer.

(iii) He shall not leave the State of Sikkim without the prior permission of the Learned Sessions Judge, East Sikkim at Gangtok, on grant of which, due notice shall be given to the I.O. by the Learned Court.

(iv) He shall not commit the offence alleged to have been committed by him in the FIR or any other offence.

9. The observations hereinabove are only for the purposes of disposing of this Application and are not to be construed as telling on the merits of the case.

10. The Application is allowed and stands disposed of accordingly.

11. Certified copies be made available to the parties as per Rules.

Sd/ -
(**Meenakshi Madan Rai**)
Judge
07-10-2016

Approved for reporting : **Yes**

Internet : **Yes**