

HIGH COURT OF MEGHALAYA
AT SHILLONG

A.B. No.22/2018

Date of Order: 31.10.2018

Smti. Merry Bina Marak Vs. State of Meghalaya & anr
Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Chief Justice

Appearance:

For the Petitioner/Appellant(s) : Mr. HL Shangreiso, Adv

For the Respondent(s) : Mr. R Gurung, Addl.PP

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: No

1. Petitioner apprehending arrest in connection with Wanwadi PS Case No.4791/2018 under Sections 419, 420 IPC and Section 66(d) of I.T. Act has filed instant petition under Section 438 read with Section 482 of the Code of Criminal Procedure (hereinafter referred to as "CrPC").

2. Learned Addl.PP submits that the occurrence has taken place within the jurisdiction of Wanwadi Police Station, Pune City, Maharashtra, therefore, this Court has no jurisdiction.

3. The contention of learned counsel for the petitioner is that the petitioner is a woman resident of Danakdopgre village, New Tura, West Garo Hills, has three minor children pursuing studies at Tura, has been wrongly implicated. Petitioner being a housewife requires some time to make arrangement to enable her to go to Pune, Maharashtra, seeks transit bail for a period of one month to enable her to apply before the competent court in the State of Maharashtra for grant of anticipatory bail.

4. The first question which arises for consideration is as to whether this Court can invoke powers under Sections 438 and 482 CrPC when the occurrence has taken place in the State of Maharashtra.

5. Learned counsel for the petitioner would submit that he is praying for transit bail even otherwise powers under Section 438 CrPC or extra ordinary jurisdiction of this Court is not fettered by any jurisdictional limit. Language of Sections 438 and 482 CrPC do not limit exercise of powers regarding the occurrence beyond the State of Meghalaya. In support of his contention has placed reliance on the following judgments:-

1. Pritam Singh v. State of Punjab: 1980 Cri LJ 1174;
2. Capt. Satish Kumar Sharma v. Delhi Administration & ors: ILR 1990 Delhi 203;
3. Sailesh Jaiswal v. State of West Bengal & ors: 1998 (2) ALD Cri 924;
4. Tarun Ishwardas Jagyasi v. State of Gujarat: Misc. Application No.9578/2008 vide order dated 21.07.2008;
5. Rahul Agarwal v. State of Rajasthan: Crl. Misc. Bail Application No.11470/2013 vide order dated 04.12.2013; and
6. Smti.Sharwari Alagharu v. State of Andhra Pradesh & anr: Criminal Petition No.1322/2014 vide order dated 03.04.2014.

6. Learned Addl.PP in support of contention that this Court has no jurisdiction, has placed reliance on the judgment rendered by the Gauhati High Court, Imphal Bench in the case of “State of Manipur v. Vikas Yadav” in Crl. Rev. Case No.6 of 1999 reported in 2000 (3) GLT 253.

7. The question for determination is as to whether jurisdiction of the Court for invoking powers under Sections 438 and 482 CrPC is to be decided on the basis of place of occurrence, place of residence of the accused or place where the accused apprehends arrest. The question of jurisdiction in each case depends upon on its own facts i.e. to say if an offence is a continuing offence committed in different places but the case is registered at one place, in such a situation, place of occurrence can be at all places where part occurrence has taken place, so in such a situation, jurisdiction of the Court cannot be confined to the place where the case has been registered. Therefore, in such a situation, the accused can seek invocation of powers under Sections 438 or 482 CrPC in the court within whose jurisdiction occurrence or part occurrence has taken place. In short, jurisdiction

depends on the place of occurrence not the place where the accused resides or the place where the accused apprehends arrest.

8. It is settled that jurisdiction for grant of bail is with the Committal Court or the Trial Court as is clear from Chapter XIII CrPC. Sections 177 and 178 CrPC for the purpose of this case are relevant to be quoted.

“177. Ordinary place of inquiry and trial.- Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

178. Place of inquiry or trial.- (a) When it is uncertain in which of several local areas an offence was committed, or
(b) where an offence is committed partly in one local area and partly in another, or
(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or
(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.”

9. The jurisdiction of High Court under Sections 438 and 482 CrPC and in case of Court of Sessions under Section 438 has to be within their respective territorial jurisdictions.

10. Section 167 CrPC envisages that when investigation is not completed within twenty-four hours, accused shall have to be forwarded to the Magistrate. In case the Magistrate to whom the person is forwarded has no jurisdiction to try the case, can authorize the detention of the accused for a term not exceeding fifteen days, and if he has no jurisdiction to try the case or commit it for trial and considers further detention unnecessary, he has to forward the accused to the Magistrate having jurisdiction. Section 167 CrPC no doubt empowers the Magistrate having no jurisdiction to authorize detention of the accused for a period not exceeding fifteen days. Picking up the thread from there learned counsel for the petitioner submits that even though this Court has no jurisdiction but can grant transit bail. The submission has relevance, in order to safeguard the interest of the accused in custody, if investigation is not completed within twenty-four hours, he has to be produced before the Magistrate.

11. Sections 79, 80 and 81 CrPC provide protection in case of arrest of the accused on execution of warrant outside local jurisdiction of the

Court which issued it. Section 80 provides that when a person is arrested outside the jurisdiction on execution of warrant, he has to be produced before the nearest Magistrate or District Superintendent of Police or Commissioner of Police. Then Section 81 provides as to how the person so arrested has to be sent in custody and also provides that in case offence is bailable and accused is ready to furnish surety, he can be released, irrespective of jurisdiction.

12. In view of Sections 79 to 81 and Section 167(2) CrPC, transit bail can be granted even by the Court not having jurisdiction i.e. within whose jurisdiction occurrence has not taken place. The said provisions are in keeping with the protection/liberty of the person. Sections 79 to 81 of the Code are relevant to be reproduced hereunder:-

“79. Warrant directed to police officer for execution outside jurisdiction.- (1) When a warrant directed to a police officer is to be executed beyond the local jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to an Executive Magistrate or to a police officer not below the rank of an officer in charge of a police station, within the local limits of whose jurisdiction the warrant is to be executed.

(2) Such Magistrate or police officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute the same, and the local police shall, if so required, assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police officer within whose local jurisdiction the warrant is to be executed will prevent such execution, the police officer to whom it is directed may execute the same without such endorsement in any place beyond the local jurisdiction of the Court which issued it.

80. Procedure on arrest of person against whom warrant issued.- When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within thirty kilometres of the place of arrest or is nearer than the Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 71, be taken before such Magistrate or District Superintendent or Commissioner.

81. Procedure by Magistrate before whom such person arrested is brought.- (1) The Executive Magistrate or District Superintendent of Police or Commissioner of Police shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court:

Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under section 71 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent or Commissioner shall take such bail or security, as the case may be, and forward the bond, to the Court which issued the warrant:

Provided further that if the offence is a non-bailable one, it shall be lawful for the Chief Judicial Magistrate (subject to the provisions of section 437), or the Sessions Judge, of the district in which the arrest is made on consideration of the information and the documents referred to in sub-section (2) of section 78 to release such person on bail.

(2) Nothing in this section shall be deemed to prevent a police officer from taking security under section 71.”

13. In view of Sections 167, 79, 80 and 81 CrPC now the question as to whether transit bail in anticipation of arrest is permissible irrespective of jurisdiction linked with place of occurrence.

14. In the judgment passed by the Kolkata High Court in the case of “Sailesh Jaiswal v. State of West Bengal & ors”: 1998 (2) ALD Cri 924, the Full Bench of Kolkata High Court while dealing with reference of the Division Bench regarding specific point as to whether Section 438 CrPC empowers to grant anticipatory bail by any High Court or Court of Sessions within the country irrespective of the place of commission of an offence. After referring to Sections 177, 76 and 167(2) and various judgments, what has been held is clear from the following portions of para 27:-

“27. The exercise of jurisdiction of anticipatory bail by any other court namely the High Court or Court of Sessions beyond the local limits of the jurisdiction is limited to the extent of consideration of a bail for the transitional period but it has no jurisdiction to transgress into the limits of the local jurisdiction of the court within which offence is alleged to have been committed.”

15. The High Court of Karnataka allowing Criminal Petition No.1322 of 2014 in the case of “Smt. Sharwari Alagharu v. State of

Andhra Pradesh & anr”, while noticing the alleged offences are not exclusively punishable with death or imprisonment for life, granted transitory bail till filing of the petition before the concerned jurisdictional Court at Hyderabad; the Rajasthan High Court in the case of “Rahul Agarwal v. State of Rajasthan” vide order dated 04.12.2013 has granted transitory bail with the condition that the petitioner therein may approach the appropriate Court in the State of West Bengal within 15 days for grant of regular bail; the High Court of Gujarat in the case of “Tarun Ishwardas Jagyasi v. State of Gujarat” has also granted transitory bail for a period of 30 days; and the Delhi High Court in the case of “Capt. Satish Kumar Sharma v. Delhi Administration & ors”: ILR 1990 Delhi 203 has also granted bail, therefore this petition may be treated alike.

16. The judgment rendered by the Imphal Bench of Gauhati High Court in the case of “State of Manipur v. Vikas Yadav” reported in 2000 (3) GLT 253, it has been held that only the High Court or Court of Sessions have power to grant anticipatory bail within whose local jurisdiction non-bailable offence had been committed. Law has been traced in the said judgment and after referring to various provisions of CrPC, it has been concluded that it is only the High Court or Court of Sessions within whose jurisdiction occurrence has taken place to exercise powers under Section 438 CrPC. But in the said judgment, on merits, also it has been concluded that the petitioner do not deserve concession of pre-arrest bail.

17. In the judgment rendered by the Full Bench of Kolkata High Court, it has been held that grant of transitory bail by the Court within whose jurisdiction accused has apprehension of arrest is allowable. But at the same time for grant of transitory bail, merit position of the case cannot be ignored.

18. Personal liberty is precious. Deprivation whereof has to be in exceptional cases on reasonable ground. In the judgment rendered by the Hon’ble Apex Court in the case of “Shri Gurbaksh Singh Sibbia & ors v. State of Punjab: (1980) 2 SCC 565, it has been held that in order to meet the challenge of Article 21 of the Constitution, the procedure

established by law for depriving a person of his liberty must be fair, just and reasonable. Para 26 of the judgment is relevant to be quoted:-

“26. We find a great deal of substance in Mr. Tarkunde’s submission that since denial of bail amounts to deprivation of personal liberty, the Court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when no such restrictions have been imposed by the legislature in the terms of that section. Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over-generous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned. No doubt can linger after the decision in *Maneka Gandhi [Maneka Gandhi v. Union of India, (1978) 1 SCC 248]* that in order to meet the challenge of Article 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. Section 438, in the form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein.”

19. **For the stated reasons and the law, I hold that power to be exercised under Sections 438 and 482 CrPC rest with the High Court or Court of Sessions within whose jurisdiction occurrence or part of occurrence has taken place. However, for grant of transitory pre-arrest bail regarding non-bailable offences in the deserving cases, power of the High Court or Court of Sessions within whose jurisdiction, person resides or place where he apprehends arrest, is permissible as such not barred. Therefore, accused can invoke jurisdiction of the High Court or Court of Sessions within whose jurisdiction he resides or place where he apprehends arrest however, grant of pre-arrest transit bail can’t be a matter of routine. Host of circumstance, including heinousness of the crime have to be taken care of.**

20. The petitioner being a resident of Garo Hills residing within the territorial jurisdiction of this Court, therefore, in view of the law and

aforesaid position, grant of transitory bail has to be considered subject to the merit, so as to enable the petitioner to appear before the Court of competent jurisdiction for obtaining relief under Sections 438 or 482 CrPC.

21. The case of the petitioner as setup in the petition is that two persons have been arrested by Police in Pune in connection with financial transaction by using the account number of the petitioner. The sister-in-law of the petitioner, namely, Smti.Christana M. Marak had taken away the ATM Card, Pass Book and Cheque bearing SBI A/C No.37052981771 from the petitioner in the month of March 2018 with a promise to return it quickly, which was not returned and is alleged misused by the sister-in-law as a result whereof, case has been registered at Pune. The petitioner being a lady having three minor children is ready to cooperate with the investigating officer, want some time to approach the Court of competent jurisdiction for concession of pre-arrest bail.

22. The investigating officer (crime) Wanwadi Police Station, Pune City, Maharashtra has issued summon under Section 160 CrPC informing the petitioner about registration of the case and her requirement to appear for further investigation of the case on 27.08.2018 at 11:00 AM at Wanwadi Police Station. In case of default, it will be assumed that the petitioner has nothing to say, as such, legal action will be taken.

23. It is the summon issued under Section 160 CrPC based on which the petitioner apprehends arrest. In terms of Section 160 CrPC, a police officer investigating a case may require attendance of any person who appears to be acquainted with the facts and circumstances of the case, if so required. Proviso to Section 160 CrPC envisages that no male person (under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person) shall be required to attend any place other than the place in which such male person or woman resides.

24. The petitioner admittedly being a woman cannot be asked to attend investigation in terms of Section 160 CrPC at Pune. Last date

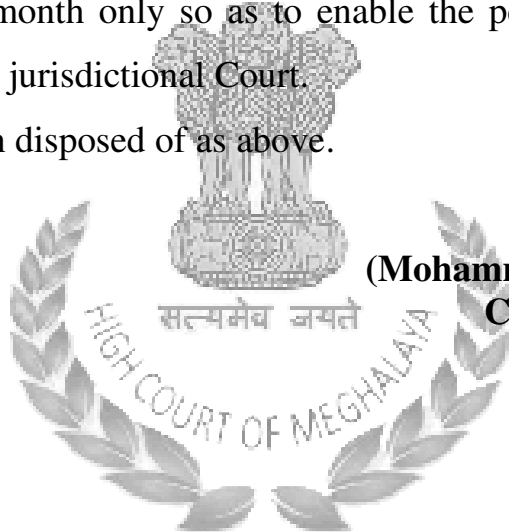
for appearance of the petitioner before the investigating officer was on 27.08.2018, which date is over. The object of granting transitory bail is to enable the person to make arrangement for approaching the concerned Court of competent jurisdiction.

25. In the stated facts and circumstances, when no further action has been taken by the investigating officer for a period of more than two months, requirement of grant of transitory bail in its object in favour of the petitioner (a woman) is warranted.

26. Petitioner in the event of arrest in connection with the case above referred shall be released on furnishing surety bond of Rs.50,000/- and personal bond of the like amount to the satisfaction of the arresting officer.

27. The said direction is transitory to remain in force from today for a period of one month only so as to enable the petitioner to invoke jurisdiction of the jurisdictional Court.

28. Application disposed of as above.



(Mohammad Yaqoob Mir)
Chief Justice

Meghalaya
31.10.2018
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