

<b><u>Serial No. 01 &amp; 02</u></b> <b><u>Regular List</u></b>
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**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

AB. No. 10 of 2020 with  
AB. No. 11 of 2020

Date of Decision: 04.08.2020

Shri. Daniel Khongsit	Vs.	State of Meghalaya & Ors.
Shri. D. Donstan Khonglah	Vs.	State of Meghalaya & Ors.

**Coram:**

**Hon'ble Mr. Justice W. Diengdoh, Judge**

**In AB. No. 10 of 2020**

**Appearance:**

For the Petitioner/Appellant(s)	:	Mr. N. Dutta Sr. Adv. with Mr. P. Nongbri, Adv. Mr. J. Shylla, Adv.
For the Respondent(s)	:	Mr. S. Sengupta, Addl. P.P.

**In AB. No. 11 of 2020**

**Appearance:**

For the Petitioner/Appellant(s)	:	Mr. N. Dutta Sr. Adv. with Mr. P. Nongbri, Adv. Mr. J. Shylla, Adv.
For the Respondent(s)	:	Mr. H. Abraham, GA

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| i)  | Whether approved for reporting in<br>Law journals etc.: | Yes/No |
| ii) | Whether approved for publication<br>in press:           | Yes/No |

1. An FIR dated 04.06.2020 followed by another supplementary FIR dated 06.06.2020 was lodged by the Complainant Smti Kashmir Dkhar before the Officer-In-charge Dawki Police Station, West Jaintia Hills

District, which became the subject matter of Dawki P.S. Case No. 63 (06) 2020 under Sections 354/357/341/326/109/506/34 IPC.

2. A number of persons were named in the said FIRs, two of whom were arrested by the police. Two other named accused in the said FIRs, Viz Shri Daniel Khongsit the Headman of Bakur (Dawki) village, West Jaintia Hills District, Meghalaya and Shri. D. Donstan Khonglah, who is the Secretary of the Bakur Durbar Shnong have approached this Court with separate applications under Section 438 Cr.P.C.

3. These two applications, preferred by Shri Daniel Khongsit (hereinafter known as Petitioner No. 1) in A. B. No 10 of 2020 and Shri D. Donstan Khonglah (hereinafter known as Petitioner No. 2) in A.B. No 11 of 2020 being directly connected and having arisen from the same criminal case registered as Dawki P.S. Case No. 63 (06) 2020, it is therefore considered expedient to take up the same together and a common order be passed.

4. It may be mentioned that earlier, the Petitioners No. 1 & 2 have approached this Court with similar applications under Section 438 Cr.P.C., which case was registered as A.B. Case No 7 and 8 of 2020 respectively and which cases were disposed of vide a common order dated 30.06.2020. However, at the outset, it was submitted by the learned Sr. Counsel for the petitioners herein that these instant applications were filed on revelation of new grounds, to which this Court has accordingly allowed the same to be moved.

5. In reiteration, the brief facts of the case which led to the filing of these applications is that on 04.06.2020, the Complainant Smti. Kashmir Dkhar lodged an FIR with the Officer-In-Charge, Dawki P.S to the effect that on 31.05.2020 at about 3.35 pm, (however at the hearing, the learned Sr. counsel for the petitioners have submitted that through inadvertence, the typed translated copy of the FIR shows the time of occurrence as 3.35 P.M,

when the actual time as reflected in the FIR was shown as 5.35 P.M and as such, the time should now read as 5.35 P.M and not 3.35 P.M), while she was going out for a walk as soon as she reached the road, Smti. Bobby Lamin, Smti. Jennyfer Sumer and Shri. D. Donstan Khonglah (Petitioner No. 2) accosted her and started assaulting her. Thereafter, they took her to Khasi Pnar School and assaulted her and cut her hair with a scissor. Hence the complaint.

6. The police on receipt of the complaint had registered the same as Dawki P.S. Case No. 63 (06) 2020 and has launched an investigation. Another FIR dated 06.06.2020 was filed by the said Complainant alleging that after recollecting her memory, she remembered that it was Shri. Daniel Khongsit (Petitioner No. 1) who ordered for her to be tortured and also for cutting of her hair as well as for her to be beaten. This happened on 31.05.2020. The Complainant has also alleged that the Petitioner No. 1 had warned her not to file the FIR against the other three accused aforementioned.

7. Again, it may be mentioned herein that the petitioners herein have approached the Court of the learned Additional District and Sessions Judge, Jowai, West Khasi Hills with separate application for grant of pre-arrest bail, which applications were taken up, and by separate orders dated 15.06.2020 and 16.06.2020 respectively, the learned Additional District and Sessions Judge, Jowai, West Khasi Hills had rejected the said applications.

8. The petitioners as stated above, have then approached this Court with similar applications under Section 438 Cr.P.C. and vide order dated 30.06.2020, this Court has rejected the said application.

9. Heard Mr. N. Dutta, learned Sr. counsel assisted by Mr. P. Nongbri, learned counsel for the petitioners who has submitted that since the last application was rejected by this Court, new facts and circumstances have emerged, which prompted the petitioners herein to again approach this

Court.

10. The first revelation is with regard to a video which was brought out and published by a local News Channel T7 on 24.06.2020 the contents of which featured an interview with the Doctor of Dawki PHC who had apparently stated that on 02.06.2020, two days after the alleged incident, the Complainant, Smti Kashmir Dkhar visited him and complained of weakness and body ache, but it was observed that she had no injuries on her body and neither was her head shaved.

11. The second revelation is that on the date and time and place of the alleged incident (i.e. 5.35 P.M on 31.05.2020), the petitioners could not have been present at the place of occurrence since they were at the Dawki Police Station in connection with the case of one Shri Shemphang Khongrinai who was apprehended by the police on 30.05.2020 in a drunken state and was creating nuisance. The petitioners along with other Village Elders were summoned to the Police Station in connection with the said case.

12. The petitioners herein were present at the said Police Station on 31.05.2020 from 5.00 P.M to 6.00 P.M along with Shri Arjun Tongper, the Assistant Secretary, VDP of Bakur Village and some members of the Village where the said Shri Shemphang Khongrinai asked for forgiveness from those present and was let off on bail, but not before he submitted a Declaration to undertake that he will not repeat such offences. The said Declaration was executed in the presence of the Elders of the Village, the Headman and one Lady Police Officer (the I/O of the said Dawki P.S. Case No 63 (06) 2020) and signed in presence of witnesses, one of whom is the Petitioner No. 2 herein.

13. The learned Sr. counsel has however submitted that the I/O being aware of this fact has suppressed the same and it was never brought before this Court. It was only brought to light through an RTI application dated 02.07.2020 filed by the counsel of the petitioners seeking copies of the letter

dated 31.05.2020 and G.D.E. dated 31.05.2020 which revealed the actual facts as mentioned above.

14. The Hon'ble Supreme Court in the case of ***Jamuna Chaudhuri v. State of Bihar: (1974) 3 SCC 774*** was pleased to observe that, "*The duty of the Investigating Officers is not merely to bolster up a prosecution case with such evidence as may enable the Court to record a conviction but to bring out the real unvarnished truth...*" was cited by the learned Sr. Counsel for the petitioners to submit that the Investigating Officer (I/O) in this case had carried out the investigation in a biased manner with a motive merely to collect evidence to record conviction and as such, the I/O may be directed to carry out the investigation in a fair and unbiased manner.

15. On the point of preference of a second bail application before this Court which is the same Court which had dismissed the earlier bail application, the learned Sr. counsel has cited the case of ***Jagmohan Bahl v. State (NCT of Delhi): (2014) 16 SCC 501*** wherein it was held that second or subsequent anticipatory bail application can be filed if it is moved before the same Hon'ble Judge and on the availability of new grounds.

16. Another limb of argument advanced by the learned Sr. counsel for the petitioners is that at this stage of the proceedings, custodial interrogation of the petitioners is not necessary as the Complainant has been examined and the petitioners had also given their statement before the I/O.

17. Finally, it was submitted that the petitioners herein are both holding respectable position in the Village and does not have any criminal antecedents and if arrested, it would cause great ignominy, humiliation, disgrace and mental harassment to them and their families, which in effect would seriously affect their reputation and social standing and if acquitted after trial, cannot be compensated by whatever means.

18. It is therefore prayed that these two applications be allowed with any

conditions to be imposed by this Court which will be abided by the petitioners.

19. Mr. S. Sengupta, learned Addl. P.P appearing on behalf of the respondents in AB. No. 10 of 2020 has argued that the plea of alibi cannot be taken by the petitioners at this stage since the same has to be proved at the time of trial and the burden of proof will then fall upon the petitioners.

20. It was also submitted that the case diary would reveal that there are incriminating evidence against the petitioners, which was duly acknowledged by this Court when the first bail application was rejected and there is no change of circumstances or new facts which have emerged to allow this Court to lean in favour of the petitioners. These applications are therefore liable to be rejected, it was further submitted.

21. Mr. H. Abraham, learned G.A appearing on behalf of the respondents in AB. No. 11 of 2020 has also objected to the prayer of the petitioners for grant of pre-arrest bail by submitting that the petitioners have sought the indulgence of this Court on the basis of the RTI reply as well as investigation carried out by the Village Dorbar and has come up with the plea of changed circumstances. However, the Investigating Officer cannot be directed to investigate as per the wishes of the petitioners since it is the prerogative of the I/O to investigate the case as he deems fit.

22. The learned G.A. has further submitted that the petitioners have placed reliance on the Declaration dated 31.05.2020, which however does not qualify as changed circumstances and as such, the applications are liable to be rejected.

23. Having heard the learned counsels for the parties and the case diary which was duly produced before this Court having been perused, what can be understood is that the applications of the petitioners has been preferred before this Court with a prayer for grant of pre-arrest bail the second time

round.

24. As observed above, the petitioners have strongly relied on the fact that since the last applications were rejected by this Court, new facts and circumstances have been revealed, particularly through sources, some of which is in public domain and some of which have been procured through the process of RTI.

25. The learned Sr. Counsel for the petitioners have stressed on the fact that the whole incident took place at around 5.35 P.M at the P.O, when apparently the petitioners around the same time, i.e between 5.00 P.M and 6.00 P.M, were at the police station in which incidentally the I/O in this present case was also present.

26. It may be mentioned that the I/O had not made any mention about this fact in the C.D, however, it has to be pointed out that the recording of the C.D was w.e.f 04.06.2020 when the first FIR was lodged. In due course, some witnesses were examined, but none of the witnesses had stated that the petitioners herein were not present at the P.O.

27. The statement of Shri Shemphang Khongrinai was also recorded by the I/O and he did indicate that the petitioners were present at Dawki P.S on 31.05.2020 @ 5.00 P.M when he was made to execute the declaration as mentioned above. However, this witness has also stated that on his way home along with some friends, he encountered the two petitioners herein along with some other members of the village who had gathered near the Khasi Pnar school and he also saw the complainant crying and pleading with them.

28. On appraisal of the C.D, it is noticed that the I/O have not yet completed the examination of witnesses, some of which have been pointed out by the petitioners herein, for example the Doctor who had treated the Complainant on 02.06.2020 and also other witnesses who were present at the

Dawki PS on 31.05.2020 at around 5.00 P.M or so.

29. In the case of ***Jamuna Chaudhari (supra)*** cited by the petitioner as regard the observation of the Hon'ble Supreme Court on the duty of the Investigating Officers, the learned Sr. counsel for the petitioners had stressed on the fact that had the I/O performed her duty diligently, vital material facts would not have been suppressed from the Court which would, in effect, reveal that the petitioners could not have been present at the P.O on the said day of occurrence. It is however required to be pointed out that in the said case mentioned above, the matter relates to an observation on an investigation already completed, while in this case the investigation is going on and the I/O has to be given a free hand to faithfully carry on the investigation, which, as was submitted by the learned G.A Mr. Abraham, the I/O cannot be dictated as to how to carry out his or her investigation. Be that as it may, at this stage, the Court cannot come to any conclusive finding as far as the conduct or the presence of the petitioners at the P.O. at the relevant time is concerned. However, *prima facie*, the benefit of doubt could be extended to the Petitioner pending final completion of the investigation.

30. In the case of ***Siddharam Satlingappa Mhetre v. State of Maharashtra: (2011) 1 SCC 694*** at paragraph 89, the Apex Court has held that “...*In cases where the Court is of the considered view that the accused has joined investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided...*”

31. As observed above, at this stage of the proceedings, the I/O should be given ample opportunity to continue with the investigation and to examine relevant witnesses. However, as far as the petitioners herein are concerned, it is seen that they have been duly examined by the I/O and their statements have been recorded. Therefore, this Court is in agreement with the submission of the learned Sr. Counsel that custodial interrogation is not



required at this stage.

32. It may not be out of place to reiterate the basic principles governing the grant of anticipatory bail or pre-arrest bail as has been crystalized by the Hon'ble Supreme Court through its various judgments in the subject, one of which is extracted below.

33. In the case of ***Shri. Gurbaksh Singh Sibbia & Ors. v. State of Punjab: (1980) 2 SCC 565*** at paragraph 7 the Court while explaining the purport of Section 438 Cr.P.C has held that:

*“7. The facility which Section 438 affords is generally referred to as ‘anticipatory bail’, an expression which was used by the Law Commission in its 41<sup>st</sup> Report. Neither the section nor its marginal note so describes it but, the expression ‘anticipatory bail’ is a convenient mode of conveying that it is possible to apply for bail in anticipation of arrest.....The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore effective at the very moment of arrest. Police custody is an inevitable concomitant of arrest for non-bailable offences. An order of anticipatory bail constitutes, so to say, an insurance against police custody following upon arrest for offence or offences in respect of which the order is issued...”*

34. It is well settled that grant or refusal of pre-arrest bail is a discretionary power vested on the competent Court, including the High Court, however, it is also incumbent on the Court concerned to exercise this power judiciously. As laid down by the Apex Court while considering and dealing with cases of prayer for grant of pre-arrest bail, some of the factors indicated below has to be taken into consideration. These factors are:-

- “(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*

*(iii) The possibility of the applicant to flee from justice;  
(iv) The possibility of the accused's likelihood to repeat similar or the other offences.*

*(v) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*

*(vi) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;”*

35. In the context of the case in hand, this Court is of the considered view that the petitioners, on the plea of alibi have been able to convince this Court that their involvement in the incident which happened on 31.05.2020 at around 5.35pm or so have to be further examined, however in the context of this instant application, the Petitioners herein have been able to make out a case for grant of pre-arrest bail at this juncture.

36. The applications preferred herein are hereby allowed. The petitioners, if arrested shall be released on bail on the following conditions: -

- i. That they shall execute a personal bond of ₹ 50,000/- (Rupees fifty thousand) each with two sureties for each one of them of like amount.
- ii. That they shall not abscond or tamper with the evidence or witnesses.
- iii. That they shall not threaten the Complainant or cause obstruction to her peaceful habitation in the village.
- iv. That they shall co-operate with the I/O as and when required.

Needless to say, violation of all or any of the above conditions would allow the I/O to pray for cancellation of the bail.

37. The petitioners are directed to appear before the Court of the learned Chief Judicial Magistrate, Jowai for execution of the bond and other formalities and the learned Chief Judicial Magistrate is hereby directed to accept the same on being duly satisfied.

38. In view of the above, these applications are hereby disposed of.

39. The interim bail granted by this Court in its earlier order is hereby made absolute.

40. Registry is directed to return the C.D to the learned Addl. P.P.

Meghalaya  
04.08.2020  
"D. Nary, PS"



**Judge**