

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

AB. No. 12 of 2020

Date of Decision: 18.08.2020

Shri. Heiratami Biam

Vs.

State of Meghalaya.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)

: Mr. B. Laitmon, Adv

For the Respondent(s)

: Mr. K. Khan P.P. with
Mr. A.H. Kharwanlang, GA

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

1. Under consideration herein is an application under Section 438 Cr.P.C. which emanated on 28.02.2020 when an FIR was lodged by the Complainant as the mother of the victim before the Officer-In-Charge, Women Police, Jowai Police Station, West Jaintia Hills District alleging that the petitioner herein had sexually assaulted and raped her minor daughter on 27.02.2020 at about 6.30 P.M at the staff quarter of Finedy Tea Stall, Lad Thomas Jones College, Jowai.

2. From the records, including the contents of the case dairy of Jowai P.S Case No 30 (2) 20 under Section 3(a)/4 of POCSO Act, which is the registered number of the FIR so lodged, it is seen that on receipt of the verbal information from the Complainant who had appeared personally at the Police Station at about 10.10 P.M on 27.02.2020, the victim was sent for

medical examination. Thereafter, as stated above, the FIR was lodged on 28.02.2020 and formal investigation was launched.

3. In the meantime, the petitioner had approached the Court of the Special Judge (POCSO), Jowai with an application under Section 438 Cr.P.C., who has initially granted interim bail to the petitioner and had called for the case dairy and after finally hearing the parties, had, vide Order dated 09.07.2020 rejected the application of the petitioner. Thereafter, the I/O then sought to arrest him in connection with the said Jowai P.S case No 30 (2) 20.

4. The petitioner, on 30.07.2020 then approached this Court with an application under Section 438 Cr.P.C. as stated above praying for grant of pre-arrest bail on the ground that he apprehends arrest in connection with the said Jowai P.S case No 30 (2) 20.

5. Heard Mr. B. Laitmon, learned counsel for the petitioner who at the outset, on query by this Court, has submitted that the petitioner will not pursue the line of argument as far as assailing the Order dated 09.07.2020 of the learned Special Judge (POCSO), Jowai is concerned, but would argue on the merits of the prayer as stated in this instant application.

6. Learned counsel for the petitioner has submitted that apart from the oral argument advanced, the petitioner has also submitted a written argument, which may be perused by this Court while considering the case of the petitioner.

7. The learned counsel for the petitioner has also referred to the Order dated 12.03.2020 passed by the learned Special Judge (POCSO) Jowai, which is the grant of interim bail to the petitioner. However, the matter could not be taken up for final hearing for almost five months due to the circular of the High Court on account of the prevailing pandemic situation. In the meantime, the interim bail continues to remain in force till the bail application was finally rejected vide Order dated 09.07.2020.

8. It is the submission of the petitioner that during the five months' period when he was granted interim bail, he had not misused his liberty, but instead had cooperated with the I/O and over five months have elapsed and as such, it is submitted that the investigation would have been completed and therefore, there is no useful purpose to be achieved by detaining the petitioner in custody.

9. Another point of argument of the petitioner is that he is no longer working in the said Tea Stall and his village is approximately about 70 Kms from the residence of the victim and as such, there is no threat of intimidation of the victim by the petitioner. Even Section 506 IPC was also not invoked as far as the petitioner is concerned, it is further submitted.

10. That the petitioner has no criminal antecedent and also that he had appeared before the I/O on 03.07.2020 and 04.08.2020 was also another line of argument of the petitioner to contend that he is entitled to pre-arrest bail, which if granted, he undertakes to abide by any conditions to be imposed by the Court.

11. In support of his argument, the petitioner has cited the following cases:

- i) ***Bhadresh Bipinbhai Sheth v. State of Gujarat: (2016) 1 SCC 152 at paragraphs 22, 25.3 & 26.***
- ii) ***Siddharam Satlingappa Mhetre v. State of Maharashtra & Ors: (2011) 1 SCC 694 at paragraphs 86, 100, 110 & 112.***
- iii) ***Gurbaksh Singh Sibbia & Ors. v. State of Punjab: (1980) 2 SCC 565 at paragraphs 21 & 31.***
- iv) ***Chidambaram v. Directorate of Enforcement: AIR 2019 SC 4198 at paragraphs 78, 79, 80, 81, 82 & 83.***

The last cited case above, was sought to be referred to by the learned counsel for the petitioner to submit that the same is not relevant as far as the case of the petitioner is concerned.

12. Mr. K. Khan, learned P.P assisted by Mr. A.H. Kharwanlang, learned GA in his opposition to the submission of the learned counsel for the petitioner, has, while appearing for the State respondent submitted that from the records it is seen that the statement of the victim has been recorded and she has clearly stated that she was raped by the petitioner herein.

13. The statement of the petitioner was also recorded and he too has admitted that there was sexual intercourse between him and the victim, who is a minor and therefore commission of offence under Section 3 of the POCSO Act has been made out and on this prima facie evident of the occurrence of the incident, the prayer of the petitioner for grant of pre-arrest bail may not be granted, it was submitted.

14. I have heard the submission of the learned counsels for the parties and I have also perused the application in hand as well as the case dairy which was duly produced before this Court.

15. What the learned counsel for the petitioner sought to portray before this Court is that the petitioner had earlier been enlarged on interim bail and for more than five months he has not abused his liberty by intimidating the victim or witnesses and has not absconded, but had rather cooperated with the I/O by appearing as and when required.

16. Though the petitioner has not strenuously denied that he had committed the alleged offence, he has however tried to cast some doubt on the same by stating that it is very unlikely to have committed the offence as the place of occurrence was the servants' quarter where there are about nine other employees staying there.

17. The authorities relied upon by the petitioner speaks mainly about the principles of grant or refusal of bail, including anticipatory bail. In the case of *Bhadresh Bipinbhai Sheth (supra)* in the paragraphs cited by the petitioner, the Court has, inter alia held that the object of bail is to secure the attendance of the accused at the trial and bail should not be withheld as a

punishment. The Court has also to consider whether there is any possibility of the accused tampering with the evidence or influencing witnesses etc. Another factor to be considered is when the accused has joined the investigation and he is fully cooperating with the investigating agency, in that event, custodial interrogation is to be avoided.

18. In the case of *Siddharam Satlingappa Mhetre (supra)*, similar principles were reiterated as to the accused who have joined investigation, custodial interrogation is to be avoided. However paragraph 112 of the same has detailed the factors and parameters to be taken into consideration while dealing with anticipatory bail.

19. Similarly, in the case of *Shri Gurbaksh Singh Sibbia (supra)*, the Apex Court has apart from holding that the antecedents of the applicant has to be considered for which anticipatory bail must be granted, if there is no fear that the applicant will abscond, the Court has also listed a number of considerations which must weigh with the Court before granting or rejecting anticipatory bail. However, it has also held that the petitioner need not make out a special case for exercise of the power to grant anticipatory bail, which will virtually reduce the salutary power conferred by Section 438 Cr.P.C to a dead letter.

20. In the case of *P. Chidambaram (supra)* at paragraphs 78, 79, 80, 81, 82 & 83 the Apex Court has indeed discussed the exercise of power of the Court under Section 438 Cr.P.C. vis-à-vis cases of economic offences, which may not be relevant to the case of the petitioner herein, however in the preceding paragraphs of this judgment, the Court has discussed at length on the applicability of the principles of anticipatory bail by citing a number of authorities, some of which have been referred hereto above.

21. Coming to the case in hand, what is seen from the records, particularly the case dairy is that the fact that there has been a physical relationship between the victim and the petitioner has been established by

the very statement of the victim as well as the petitioner before the I/O, however the version of each of them may differ, which will be determined at the trial. Suffice it to say that the factum of the incident as alleged in the FIR is correct.

22. Applying the facts of the case in the light of paragraph 31 of ***Gurbaksh Singh Sibbia's case*** which reads as follows:

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and “the larger interests of the public or the State” are some of the considerations which the court has to keep in mind while dealing with deciding an application for anticipatory bail...”

23. In the case of ***Siddharam Satlingappa Mhetre (supra)*** at paragraph 112 referred to by the petitioner, the Hon'ble Supreme Court has held that :

“112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(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 other offences;*
- (v) *Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;*
- (vi) *Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;*
- (vii) *The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;*
- (viii) *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;*
- (ix) *The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
- (x) *Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail”.*

24. From the medical report it is seen that the age of the victim is between 16 and 18 years, which basically means that she is still a minor at the time of occurrence and by law, any act, sexual in nature with a minor is a crime.

25. Considering the nature and gravity of the offence, a prima facie case against the petitioner has been made out, which in the opinion of this Court would not qualify him to be granted anticipatory bail at this juncture.

26. In the light of the above, this instant application is hereby rejected.

27. The interim bail granted is hereby discharged.
28. Registry is directed to send back the case dairy.
29. Case disposed of. No cost.
30. Before parting with this case, it is hereby made clear that the observations made by this Court are only for the purpose of grant or refusal of anticipatory bail and shall not be prejudicial to the accused at the trial, which will eventually be on the basis of the evidence adduced thereof.

Judge

Meghalaya
18.08.2020
"D. Nary, PS"

