

LHAINEL
CHONG
HAOKIP

Digitally signed
by
LHAINELCHONG
HAOKIP
Date: 2021.07.28
11:57:33 +05'30'

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

Bail Appln. No. 17 of 2021

Mr. Nelson Nameirakpam, aged about 33 years, S/o Noren Nameirakpam Singh, a resident of Singjamei Chingamaka Yanglem Leikai, P.O. & P.S. Singjamei, District-Imphal West, Manipur.

... Petitioner/Accused person

-Versus -

1. The State of Manipur, represented by the Secretary (Home), P.O.& P.S. Imphal West-795001.
2. The Officer-in Charge, Lamphel Police Station, Imphal West-795001.

... Respondents

B E F O R E

HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

For the Petitioner	: Mr. H. Chandrakumar, Adv.
For the respondents	: Mr. Y. Ashang, PP.
Date of Hearing	: 13.07.2021.
Date of Order	: 28.07.2021.

ORDER

[1] Heard Mr. H. Chandrakumar, learned Advocate appearing for the petitioner and Mr. Y. Ashang, learned Public Prosecutor (PP) appearing for the respondents. The present application had been filed under section 439 of the Code of Criminal Procedure, 1973 with a prayer for releasing the petitioner/accused on bail.

[2] The brief facts leading to the arrest of the petitioner/accused in connection with FIR No. 45(3)2021 L.P.S. u/s 326/307/34-IPC read with section 201 IPC as stated in the bail objection report dated 21.06.2021 submitted by the concerned I.O. of the case is that on 17.03.2021 at 11

p.m., the complainant namely P. XmarKape of Mao PungdungTadubi, Senapati District, Manipur lodged a written report to the O.C/Lamphel Police Station stating that on the same day at around 6 p.m., he drop his employer namely Mr. Roshan Thounaojam (hereinafter referred to as the victim) at the Horizon Printing Shop, Lamphel Supermarket, Imphal West, owned by the petitioner/accused. The complainant and one Mr. Hongching, who accompanied the victim, were waiting for the victim in the car,parked outside the shop owned by the petitioner/accused as instructed by the victim. Thereafter, at around 7 pm, the petitioner/accused came towards the car by holding the victim with blood stain all over his body suspected to have been sliced by a sharp object in an attempt to kill the victim as a result of which he received injury on his neck (right mid-line). Thereafter, the victim was evacuated to the Little Clinic Hospital for medical treatment. On the basis of the said complaint, the aforesaid FIR was registered and the petitioner/accused was arrested on 18.03.2021 and remanded to Police Custody for 5(five) days and thereafter, the petitioner/accused was remanded to Judicial Custody.

[3] The learned counsel appearing for the petitioner/accused submitted that the accused and the victim are close friends and on the faithful day of 17.03.2021 in the evening at around 6 p.m., the victim visited the accused in his shop located at Lamphel Supermarket . On that day, there was a heated argument between the accused and the victim and suddenly a scuffle started between them. During the scuffle and out of anger and sudden provocation, the accused person picked up a cutter which was

lying in the floor and caused the injury sustained by the victim. However, as soon as the accused notice the injury sustained by the victim, the accused immediately brought out the victim up to his car by holding him and helped him to evacuate to the Hospital for medical treatment. The learned counsel for the petitioner/accused further submitted that there was no intention on the part of the accused to kill the victim and injury to the victim was caused due to the sudden anger and provocation arising out of the scuffle between the accused and the victim. It is also strenuously submitted by the learned counsel appearing for the petitioner that the accused and the victim are very close friends and as such on realising the injury caused by him to the victim, the accused immediately helped his friend by holding him and bringing him out from his shop up to the car of the victim and to evacuate to the Hospital for medical treatment. Such immediate action of the accused after realising the injury caused by him to the victim clearly demonstrates that the accused person had no intention to kill the victim at the time when he caused the injury to the victim. Accordingly, the learned counsel submitted that there is no prima-facie case for attracting the provisions of section 326 and 307 IPC in the present case, rather, the provisions under section 335 IPC is attracted, which is a bailable offence.

[4] The learned counsel for the petitioner/accused also submitted that the accused was arrested by the Police on 18.03.2021 in connection with the present FIR case and he had been under Police and Judicial Custody for the last about 4(four) months. It is also further submitted that the I.O. of the case have completed the investigation and charge sheet was submitted

on 30.04.2021. However, no procedure has been taken up for committing the case to the Sessions Court for trial till today and charge hearing of the case had also been adjourned. The learned counsel for the petitioner/accused submitted that the trial of the case is not likely to be commenced in the near future and it will take a long time to complete the trial of the case due to the prevailing situation in the State of Manipur arising out of the Pandemic of COVID-19.

[5] It has been submitted that as the investigation of the case had been completed and as charge sheet had been submitted, the custody of the petitioner/accused is no longer necessary inasmuch as, the petitioner/accused is a simple man without any criminal antecedents or without any past criminal records. He is also a deeply rooted person in society having a respectable family and accordingly, he is not likely to fled or abscond during the trial of the case. Moreover, the petitioner/accused being a simple man and earning his livelihood by running his business by opening a small shop in the name and style "Horizon" involving in printing and supply of stationary items and the petitioner/accused being not an influential person in the society, there is no question of tampering the evidences or influencing the witnesses by him. In that view of the matter, it has been submitted that the petitioner/accused is entitled to be released on bail during the trial of the case. The learned counsel for the petitioner/accused further submitted that if the present Bail Application is rejected and the accused is to be kept under custody during the trial of the

case, which is likely to take a long time, an injustice and irretrievable injury will be caused to the petitioner/accused.

[6] The counsel for the petitioner has cited the following judgments of the Hon'ble Apex Court:-

1. “Sanjay Chandra Vs. Central Bureau of Investigation”

reported in (2012) 1 SCC 40 :

“21. *In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.*

“22. *From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.*

“23. *Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.*

“27. *This Court, time and again, has stated that bail is the rule and committal to jail an exception. It has also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution.*

“28. *In the State of Rajasthan V. Balchand this Court opined: (SCC pp. 308-09, paras 2-3):*

“2. *The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the court. We do not intend to be exhaustive but only illustrative.*

“3. *It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also the heinousness of the Crime. Even so, the record of the petitioner in this case is that, while he was been on bail throughout in the trial court and he was released after the judgment of the High Court, there is nothing to suggest that he has abused the trust placed in him by the court; his social circumstances also are not so unfavourable in the sense of his being a desperate character or unsocial element who is likely to betray the confidence that the court may place in him to turn up to take justice at the hands of the court. He is stated to be a young man of 27 years with a family to maintain. The circumstances and the social milieu do not militate against the petitioner being granted bail at this stage. At the same time any possibility of the absconsion or evasion or other abuse can be taken care of by a direction that the petitioner will report himself before the police station at Baren once every fortnight.”*

“32. *In Moti Ram V. State of M.P., this Court, while discussing pretrial detention, held: (SCC p. 52, para 14):*

“14. *The consequences of pretrial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family.”*

“33. The concept and philosophy of bail was discussed by this Court in *Vaman Narain Ghiya V. State of Rajasthan*, thus: (SCC pp. 286 -87, para 6-8):

“6. ‘Bail’ remains an undefined term in Cr.PC. Nowhere else has the term been statutorily defined. Conceptually, it continues to be understood as a right for assertion of freedom against the State imposing restraints. Since the UN Declaration of Human Rights of 1948, to which India is a signatory, the concept of bail has found a place within the scope of human rights. The dictionary meaning of the expression ‘bail’ denotes a security for appearance of a prisoner for his release. Etymologically, the word is derived from an old French verb ‘bailer’ which means to ‘give’ or ‘to deliver’, although another view is that its derivation is from the Latin term ‘baiulare’, meaning ‘to bear a burden’. Bail is a conditional liberty. Stroud’s judicial Dictionary (4th Edn., 1971) spells out certain other details. It states:

‘...when a man is taken or arrested for felony, suspicion of felony, indicted of felony, or any such case, so that he is restrained of his liberty. And, being by law bailable, offereth surety to those which have authority to bail him, which sureties are bound for him to the king’s use in a certain sums of money, or body for body, that he shall appear before the justices of goal delivery at the next sessions, etc. Then upon the bonds of these sureties, as is aforesaid, he is bailed-that is to say, set at liberty until the day appointed for his appearance.’

Bail may thus be regarded as a mechanism whereby the State devolutes upon the community the function of securing the presence of the prisoners, and at the same time involves participation of the community in administration of justice.

7. Personal liberty is fundamental and can be circumscribed only by some process sanctioned by law. Liberty of a citizen is undoubtedly important but this is to balance with the security of the community. A balance is required to be maintained between the personal liberty of the accused and the investigational right of the police. It must result in minimum interference with the personal liberty of the accused and the right of the police to investigate the case. It has to dovetail two conflicting demands, namely, on the one hand the requirements of the society for being shielded from the hazards of being exposed to the misadventures of a

person alleged to have committed a crime; and on the other, the fundamental canon of criminal jurisprudence viz. the presumption of innocence of an accused till he is found guilty. Liberty exists in proportion to wholesome restraint, the more restraint on others to keep off from us, the more liberty we have. (See A.K. Gopalan V. State of Madras.)

8. The law of bail, like any other branch of law, has its philosophy, and occupies an important place in the administration of justice and the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal. An accused is not detained in custody with the object of punishing him on the assumption of his guilt.”

“36. This Court has taken the view that when there is a delay in the trial, bail should be granted to the accused. (See Babba V. State of Maharashtra, Vivek Kumar V. State of UP and Mahesh Kumar Bhawsinghka V. State of Delhi.)

“40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

“46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.

2. **“Gudikanti Narasimhulu & Ors Vs. Public**

Prosecutor, High Court of Andhra Pradesh”reported in AIR 1978 SC

429:

“10. The significance and sweep of Art. 21 make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even-handed and geared to the goals of community good and State necessity spelt out in Art. 19. Indeed, the considerations I have set out as criteria are germane to the constitutional proposition I have deduced. Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the bi-focal interests of justice – to the individual involved and society affected.

“11. We must weight the contrary factors to answer the test the reasonableness, subject to the need for securing the presence of the bail applicant. It makes sense to assume that a man on bail has a better chance to prepare of present his case than one remanded in custody. And if public justice is to be promoted, mechanical detention should be demoted. In the United States, which has a constitutional perspective close to ours, the function of bail is limited, ‘community roots’ of the applicant are stressed and after the Vera Foundation’s Manhattan Bail Project, monetary suretyship is losing ground. The considerable public expense in keeping in custody where no danger of disappearance or disturbance can arise, is not a negligible consideration. Equally important is the deplorable conditions, verging on the inhuman, of our sub-jails, that the unrewarding cruelty and expensive custody of avoidable incarceration makes refusal of bail unreasonable and a policy favouring release justly sensible.

“17. In this jurisprudential setting, I take up each case. Detailed retiocination is not called for, since I have indicated the broad approach. And, for a bail order – once awareness of matters of relevance is assured – the briefer the better, and prolixity may be fraught with unwitting injury. The focus is on personal freedom, barricaded or banned when it turns a menace to the fair administration of justice which is the foundation of a free society.”

3. **“Bhagirathsinh Judeja Vs. State of Gujarat”**reported

in AIR 1984 SC 372:

“5. * * * * *

“If there is no prima facie case there is no question of considering other circumstances. But even where a prima facie is established, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence.

“6. * * * * * * * *

“And the trend today is towards granting bail because it is now well-settled by a catena of decisions of this Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence.

4. “VamanNarain Ghiya Vs. State of Rajasthan”

reported in (2009) 2 SCC 281:

“7. Personal liberty is fundamental and can be circumscribed only by some process sanctioned by law. Liberty of a citizen is undoubtedly important but this is to balance with the security of the community. A balance is required to be maintained between the personal liberty of the accused and the investigational right of the police. It must result in minimum interference with the personal liberty of the accused and the right of the police to investigate the case. It has to dovetail two conflicting demand namely, on the one hand the requirements of the society for being shielded from the hazards of being exposed to the misadventures of a person alleged to have committed a crime; and on the other, the fundamental canon of criminal jurisprudence viz. the presumption of innocence of an accused till he is found guilty. Liberty exists in proportion to wholesome restraint, the more restraint on others to keep off from us, the more liberty we have. (See A.K. Gopalan V. State of Madras)”.

[7] Mr. Y. Ashang, learned PP appearing for the respondents submitted that on perusal of the Bail Objection Report dated 21.06.2021 particularly Paras No. 3 & 5, it is very clear that the accused admitted the commission of the crime and several incriminating articles/objects were recovered and

seized on his disclosure as well as from the place of occurrence of the incident.

The learned PP further submitted that from the statement of the victim recorded under section 164 Cr.P.C. in connection with the present FIR case, it is learnt that the accused assaulted the victim on his right side neck using a cutter while the victim was about to go out from the Horizon Shop, with the intent to kill him before argument of scuffling. It is further submitted by the learned PP that from the statements given by the victim and the accused, it is ascertained that the accused person concocted a story with the intent to deceive the investigation of the case and to create a scene that the incident happen accidentally. Accordingly, it has been submitted by the learned PP that the submission made by the learned counsel appearing for the petitioner/accused that there is no prima facie case for attracting the provisions of section 326 and 307 IPC in the present case is without any merit and deserves to be rejected.

[8] It has further been submitted by the learned PP that the question whether the present case falls under section 326 and 307 IPC or whether it falls under section 335 IPC can only be decided at the time of trial as it is a question of fact to be proved by adducing the evidence and not at the stage of bail consideration. The learned PP also submitted that since the case has already been charge-sheeted on 30.04.2021, it would be appropriate procedure to agitate all the issues raised by the learned counsel appearing for the petitioner/accused before the concerned learned Trial Court at the time of charge framing. Accordingly, it has been

submitted that there is no merit in the bail application and the same may be dismissed.

[9] The learned PP relied on the following Supreme Court judgments:-

1. **“Sanjay Chandra Vs. Central Bureau of Investigation”** reported in (2012) 1 SCC 40:-

“40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.”

2. **“Vaman Narain Ghiya Vs. State of Rajasthan”** reported in (2009) 2 SCC 281:-

“11. While considering an application for bail, detailed discussion of the evidence and elaborate documentation of the merits is to be avoided. This requirement stems from the desirability that no party should have the impression that his case has been pre-judged. Existence of a prima facie case is not to be considered. Elaborate analysis or exhaustive exploration of the merits is not required. (See Niranjana Singh V. Prabhakar Rajaram Kharote.) Where the offence is of serious nature the question of grant of bail has to be decided keeping in view the nature and seriousness of the offence, character of the evidence and amongst others the larger interest of the public. (See State of Maharashtra V. Anand Chintaman Dighe and State V. Surendranath Mohanty.)

[10] After hearing the learned counsel appearing for the parties and after perusal of the record and keeping in view the ratio laid down by the Hon'ble Supreme Court in the cases cited by both the learned counsels appearing for the parties, this Court is refraining itself from giving any finding as to

whether the offence committed by the accused person will fall under section 326 and 307 IPC or under section 335 IPC, in order to avoid giving to either of the parties the impression that their case had been pre-judged and prejudiced.

[11] Even though the offence alleged against the petitioner/accused is a serious one, this Court cannot also ignored the fact that:-

(a) The petitioner/accused has been detained in Police and Judicial Custody for the last about 4(four) months;

(b) Investigation of the case had already been completed and charge sheet had been filed by the I.O. on 30.04.2021;

(c) No proceeding has been taken up by the concerned Magistrate for committing the case to the Sessions Judge for trial and no charge hearing had been done even after about two and half months from the date of submission of the charge-sheet on 30.04.2021;

(d) The trial is likely to take some time because of the prevailing situation of imposition of Curfew and other containment measures in the State due to the pandemic of COVID-19;

(e) The petitioner/accused has no criminal antecedent or past criminal records. He is also a deeply rooted person in society having a respectable family and he is not likely to fled or abscond during the trial of the case;

(f) The petitioner/accused is not an influential person in the society and there is no chance of tampering the evidence or influencing the witnesses by him.

[12] Taking into consideration the above factors and also the fact that no reason has been given by the respondents requiring the detention of the petitioner/accused under Judicial Custody after filing of the charge sheet and by following the ratio laid down by the Hon'ble Apex Court in the cases relied on by the learned counsel for the petitioner, this Court is of the considered view that the petitioner/accused is entitled to be enlarged on bail especially when there is no contention from the respondents that the accused person, if released on bail would abscond or interfere with the trial or tamper with the evidences. This Court also do not see any good reason to detain the accused in custody after completion of the investigation and filing of charge-sheet.

[13] In the result, it is ordered that the petitioner/accused be released on bail on his executing a bond of Rs.1(one) Lakh with a surety to the satisfaction of the Chief Judicial Magistrate (CJM), Imphal West, Manipur on the following conditions:-

(a) The petitioner/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him to disclose such facts to the Court or to any other authority;

(b) The petitioner/accused shall remain present before the Court on the dates fixed for hearing of the case. If he want to remain

absent, then, he shall take prior permission of the Court and in case of unavoidable circumstances for remaining absent, he shall immediately give intimation to the appropriate Court and request that he may be permitted to be present through his counsel;

(c) The petitioner/accused shall not leave the country without taking prior leave from the Trial Court;

(d) Liberty is given to the Police to make an appropriate application for modification/recalling this order, if for any reason, the petitioner/accused violates any of the conditions imposed by this Court.

[14] With the above order, the present Bail Application is disposed of.

JUDGE

FR/NFR

Lhaineichong