

Serial No. 02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

A.B. No. 6 of 2021

A.B. No. 7 of 2021

A.B. No. 8 of 2021

Date of Decision: 28.05.2021

Shri Phos Muskor	Vs.	State of Meghalaya & Anr.
Shri Proson Kam	Vs.	State of Meghalaya & Anr
Shri Barnes Kam @ Nait Kam	Vs.	State of Meghalaya & Anr

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) :	Dr. N. Mozika, Sr. Adv, with Mr. J. Shylla, Adv.
For the Respondent(s)	Mr. A. Kumar, AG with Mr. S. Sengupta, Addl. Sr. GA. Mr. A.H. Kharwanlang, GA, Ms. R. Colney, GA, Mr. H. Abraham, GA.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
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ii)	Whether approved for publication in press:	Yes/No
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1. An FIR dated 31.03.2021 was lodged before the Officer in Charge Nartiang Police Station by Shri Berjilius Muksor, headman Takhniang village to the effect that Shri Arlangki Suchiang saw one person lying on the roadside at a place called Pohkse, Takhniang village and informed the Headman, Takhniang village who went to the spot and found the said

person identified as Moris Lamin. The said Headman then went to Nartiang police station to file the FIR. On receipt of the said FIR, Nartiang PS Case No. 11(3)2021 u/s 302 IPC was registered and taken up for investigation.

2. Another FIR dated 30.03.2021 was also filed by Smti Bianoris Pale the wife of the deceased Moris Lamin jointly with Smti Lusta Lamin the sister of the deceased. Since the said FIR relates to the same incident which is the subject matter of Nartiang PS Case No. 11(3)2021 u/s 302 IPC, the same is treated as Supplementary FIR.

3. Three applications for grant of anticipatory bail was preferred before this Court by three individual applicants. However, since the subject matter of the applications is one and the same i.e. the incident related in the FIRs registered as Nartiang PS Case No. 11(3)2021, therefore it is deemed expedient and convenient to deal with all three applications together and to pass a common order.

4. In course of investigation, it appears that the police had gone to the house of the Petitioners herein, i.e. Shri Phos Muksor (AB No. 6 of 2021), Shri Proson Kam (AB No. 7 of 2021) and Shri Barnes Kam @ Nait Kam (AB No. 8 of 2021) in connection with the said case which has caused the Petitioners to strongly apprehend that they may be arrested in connection with the abovementioned case.

5. The Petitioners then approached the Court of the learned Sessions Judge, Jowai with separate anticipatory bail applications which were accordingly taken up and heard by the learned Sessions Judge and vide order dated 28.04.2021, the said bail applications were rejected and disposed of.

6. Before proceeding further, it would be proper to go into the background of the case which at the first instance could be gathered from the contents of the FIR filed by the wife of the deceased. According to the Informants, on 29.03.2021 @ 7:00PM, a group of about 30 to 40 persons

came to the residence of the deceased at Khliehriat and forcefully abducted him. Among them the informant could identify three of them i.e. Shri Pro Kam, Shri Nait Kam and Shri Khrew Muksor. The Informant along with her son then went to search for the deceased and on reaching village Takhniang at about 9:20 PM near the Community hall they saw a large crowd and on inquiry about the whereabouts of the deceased, they were told that nobody has seen him, however they saw blood stains on the road and also saw the deceased being laid on the road surrounded by a number of people. They also saw that his hands and feet were tied and he was unconscious lying in a pool of blood. When the Informant tried to help him, she was threatened with dire consequences and she recognized one of those persons as Shri Se Shadap. Thereafter, the Informant went to Nartiang PS to report the matter and on reaching there, she found out that the police have already been informed of the said incident.

7. Dr. N.Mozika, learned Sr. Counsel who is representing all the Petitioners herein has not denied the fact of the incident in which the deceased Moris Lamin was assaulted by a mob and who later succumbed to his injuries. The learned Sr. Counsel has also submitted that the deceased is known to be a habitual cattle thief, however it is admitted that nobody can take the law into their own hand as was done in the case of the deceased. As far as the Petitioner Phos Muksor is concerned, it is submitted that he is not at all involved in the case, the fact is that in the evening of 29.03.2021, he heard a hue and cry in the village and went to the spot where he saw a mob there. Immediately, he left the place and went to report the matter to the Headman of the village but he came to know that the Headman has already gone to the Police Station to report the matter, so he went back home. This Petitioner was therefore very apprehensive when he came to know that the Police came looking for him in connection with the said incident. Dr. Mozika has further submitted that this Petitioner is not even named in the FIR filed by the family members of the deceased and as such, if arrested, it would cause great ignominy, humiliation, disgrace and

mental harassment to him.

8. As to the Petitioner Shri Proson Kam, the learned Sr. Counsel has submitted that his version of the story is that on 29.03.2021, after completion of his day's work of chopping wood at his village, he returned to his residence at village Moolephaw Nongjngi along with Shri Nait Kam, another Co-Petitioner herein. On reaching home, he was informed by his aunt Smti Khamsur Kam that she has information about her stolen cows from her relative Shri Bilis Kam who is a resident of Takhniang village and requested him to meet Smti Bilis Kam in this regard. Accordingly, this Petitioner along with the other Petitioner, Shri Nait Kam went to Takhniang village and on reaching there at about 7.00 pm, they heard a hue and cry in the village and they went to the spot where they saw a mob and they turned back to go to their own village. On the way, they met the Headman of Takhniang village who is known to them and they accompanied them to the police station. Thereafter, they went back to their own village.

9. The learned Sr. Counsel has further submitted that the Petitioner was surprised and shocked to learn that the police had come looking for him on 31.03.2021 in connection with the said incident and strongly apprehending arrest, he, along with the two Co-Petitioners herein has firstly moved an application for anticipatory bail before the Court of the District and Sessions Judge, Jowai, which was rejected vide Order dated 28.04.2021, prompting him to move this application before this Hon'ble Court with a prayer for grant of pre-arrest bail.

10. It is the case of the Petitioner Proson Kam that he is not involved with the alleged incident which took place on the 29.03.2021 at Takhniang village since at the relevant time, he was at the house of Smti Bilis Kam at Takhniang village whereas the deceased Moris Lamin was said to have been abducted around the same time from Khliehriat village. It was further said that at the time of the incident, he met the Headman of Takhniang

village and even accompanied him to the police station which proved his bonafide.

11. It is therefore prayed that the Petitioner Proson Kam being a respectable person who is a Headman of a village, if arrested, would be subjected to humiliation, ignominy, disgrace and mental harassment and as such, pre-arrest bail may be granted to him on any conditions which this Court deemed fit and proper.

12. As to the Petitioner Shri Barnes Kam@ Nait Kam, in his application, he has endorsed the submission made on behalf of the Petitioner Proson Kam inasmuch as he has corroborated that he was along with Shri Proson Kam at the time of the alleged incident and in the same manner, he is also apprehending arrest as the Police came looking not only for Shri Proson Kam but also for him as he was together with Shri Proson Kam at the relevant period. Submitting that this Petitioner has no criminal background, therefore if arrested, he would also face ignominy, humiliation, disgrace and mental harassment, it is therefore prayed that he may be granted pre-arrest bail with any conditions as deemed fit and proper by this Court.

13. Impressing upon this Court that the case dairy may be called for and perused, the learned Sr. Counsel went on to say that it is well settled that seriousness of the offence would have no bearing on the case of the Petitioners if it is evident that they are not at all involved in the said incident. It was further submitted that if the contents of the case dairy reveals the involvement of the Petitioners herein, then the law may take its own course in the matter.

14. The learned Sr. Counsel has also submitted that the Petitioners herein on being granted interim bail by the learned Sessions Judge had joined investigation inasmuch as they had appeared before the IO, however it is also submitted that it is the duty of the IO to bring out the real truth and custodial questioning of the Petitioners is not required for this. The

case of ***Jamuna Chaudhuri v. State of Bihar*** (1974) 3 SCC 774 at para 11 was referred to in this regard. The case of ***Santosh S/o Dwarkadas Fafat v. State of Maharashtra*** (2017) 9 SCC 714 para 6 and ***Siddharam Satlingappa Mhetre v. State of Maharashtra*** (2011) 1 SCC 694 para 89 was also relied upon on this issue.

15. As to the issue of pre-trial detention, the learned Sr. Counsel has cited the case of ***Sanjay Chandra v. Central Bureau of Investigation*** (2012) 1 SCC 49 at paras 21 to 23 and the case of ***Dataram Singh v. State of Uttar Pradesh & Anr*** (2018) 3 SCC paras 1 to 4.

16. Again, on the contention that the seriousness and gravity of the alleged offences cannot be a ground for refusal of bail, the case of ***Prabhakar Tewari v. State of U.P. & Anr*** (2020) 1 SCC 648 para 5 and 7 was referred to by the learned Sr. Counsel.

17. Per contra, Mr. Amit Kumar, the learned Advocate General speaking on behalf of the State Respondent has again led this Court to the contents of the FIRs, that is, the first FIR which shows only the factum of discovery of the dead body of the deceased Moris Lamin and which matter was accordingly reported to the police by the Headman of Takhniang village and more importantly, the second FIR was also referred to inasmuch as there, a clear picture is seen in that the same was filed by the wife of the deceased who was allegedly abducted from his home and when his wife and others went to look for him, he was found brutally assaulted by a mob of about 30-40 persons. This incident was witnessed by the wife who later filed an FIR before the police and has also named some of the perpetrators of the crime, including the Petitioners herein.

18. The learned Advocate General then pointed out that the Petitioner Proson Kam and Nait Kam has stated in their respective applications that they had gone looking for some stolen cows belonging to their aunt and by adverting that the deceased is a habitual cow thief would only go to show

their involvement in the incident.

19. In this regard, the learned Advocate General has also submitted that the law in this respect is very clear and under section 438 Cr.P.C., the statute provides that if any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply for pre-arrest bail and the Court may prevent his arrest after consideration of relevant factors, one of which involves the nature and gravity of the accusation. Contending that anticipatory bail is not a matter of right but a privilege and exercise of discretion by the Court, the case of ***“State of M.P. v. Ram Khrishna Balothia”*** (1995) 3 SCC 221, para 7 was cited in support of this argument. Yet another case cited in this regard is the case of ***“Jai Prakash Singh v. State of Bihar”*** (2012) 4 SCC 379, paras 19,20 & 22.

20. Referring to the case of ***“Pokar Ram v. State of Rajasthan & Ors”***(1985) 2 SCC 597, the learned Advocate General has led this Court to paragraph 13 of the same and has submitted that here the Hon’ble Supreme Court has held that compelling circumstances must be made out to a person accused of committing murder and that too when investigation is in progress, which is exactly the case here as the facts would show that the murder was executed in a very gruesome manner where an innocent life has been taken, the Petitioners being very much involved in the same, as such, no compelling circumstance has been made out for grant of pre-arrest bail. Another decision was also cited by the learned Advocate General, that is the case of ***“State of Kerala v. Mahesh”*** 2021 SCC Online SC 308. Again, the learned Advocate General has cited the case of ***“Tehseen S. Poonawalla v. Union of India”*** (2018) 9 SCC 501, para 19 to further buttress his argument.

21. The learned Advocate General has also submitted that on perusal of the application of the Petitioners, it is seen that the copy of the FIR was annexed with the application which on scrutiny also contained the noting

of the Officer Incharge, Nartiang PS and endorsement of the IO, which according to the learned Advocate General is privileged information and could not have been given to the Petitioners and as such, the fact that the Petitioners have procured the said document can only mean that they are privy to the case dairy which is not permissible in law and for such an act, serious note may be taken by this Court. The case of **“Naresh Kumar Yadav v. Ravindra Kumar & Ors”** (2008)1 SCC 632 at paras 10 to 14 and **“P. Chidambaram v. Directorate of Enforcement”** (2019) 9 SCC 24 at paras 50-56 was referred to in this regard.

22. Finally, the learned Advocate General has submitted that the State would strongly oppose the prayer of the Petitioners herein on the facts and circumstance stated above.

23. I have heard the argument of the rival parties and have also given due consideration to the contention raised by the respective party in support of their case.

24. As directed, the case dairy has been duly produced before this Court and the same has been perused.

25. Facts as stated above would show that a very heinous offence was committed and that too against an individual by a mob of about 30-40 persons. If the version of the wife is to be believed, then it is apparent that the deceased was brutally assaulted, dragged, tied hand and foot and on account of the injuries sustained, has succumbed to the same. It is trite knowledge that nobody however right he, she or they may be, cannot take the law into their own hands except by due process of law, which is not the case here. Given the severity of the nature of the offence committed, it is but proper to find out the actual culprits and to punish them in accordance with law. The case of **“Tehseen S. Poonawalla”** (supra) cited by the learned Advocate General at paragraph 19 of the same has relevance in this connection. The said paragraph reads as follows: -

“ 19. Mob vigilantism and mob violence have to be prevented by the Governments by taking strict action and by the vigil society who ought to report such incidents to the state machinery and the police instead of taking the law into their own hands. Rising intolerance and growing polarisation expressed through spate of incidents of mob violence cannot be permitted to become the normal way of life or the normal state of law and order in the country. Good governance and nation building require sustenance of law and order which is intricately linked to the preservation of the marrows of our social structure. In such a situation, the State has a sacrosanct duty to protect its citizens from unruly elements and perpetrators of orchestrated lynching and vigilantism with utmost sincerity and true commitment to address and curb such incidents which must reflect in its actions and schemes.

26. Due process of law also entails that the innocent should not unnecessarily suffer and the guilty be led off scot free. However, at the initial stage of the case, particularly where the investigation is not completed, every suspect is entitled to be allowed to his version of the incident, which invariably has to be disproved by the Investigating Officer or the materials on record, including the contents of the FIR, prima facie.

27. This Court is well conscious of its responsibility in this regard and while considering an application for bail, or for that matter one with a prayer for pre-arrest bail, the basic principles of bail jurisprudence as has been well elucidated in a plethora of decisions of the Apex as well as various High Courts of this Country has to be adhered to.

28. In the opinion of this Court, every principle has to applied based on the facts and circumstances of a particular case which by itself would determine whether an applicant for grant of bail can be allowed to be enlarged on bail or not.

29. In this context, in the decision of the Hon'ble Supreme Court cited by the learned Advocate General being the case of ***“State of Kerela v. Mahesh”***(*supra*) referring to paras 16,17,18,37 & 38 respectively, it is seen that the Hon'ble Supreme Court while considering the matter of cancellation of bail granted to the accused/respondent therein, has also reiterated the set principles of bail as propounded by the Apex Court from time to time, notably that grant of bail by the Courts though discretionary, however the exercise of the same should be judicious with proper application of mind looking into the aspect of the nature and gravity of the accusation, whether there is any prima facie or reasonable ground to believe that the accused had committed the offence, the severity of the punishment in the event of conviction amongst others. At paragraphs 19, 20 and 22 in the case of ***“Jai Prakash Singh”*** (Supra), the Hon'ble Supreme Court considering the issue of grant of anticipatory bail in serious offences has held as under:

“ 19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefore. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. (See: D.K. Ganesh Babu v. P.T. Manokaran, (2007) 4 SCC 434; State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain, (2008) 1 SCC 213; and Union of India v. Padam Narain Aggarwal, (2008) 13 SCC 305).

20. In the case at hand, if considered in the light of aforesaid settled legal proposition, we reach an inescapable conclusion that the High Court did not apply any of the aforesaid parameters, rather dealt with a very serious matter in a most casual and cavalier manner and showed undeserving and unwarranted sympathy towards the accused. The High Court erred in not considering the case in the correct perspective and allowed the said applications on the

grounds that in the FIR some old disputes had been referred to and the accused had fair antecedents.

21. The relevant part of the High Court judgment impugned before us reads as under:

"Considering that the only allegation in the First Information Report is that there was previously some dispute between the deceased and the petitioner and they had quarrelled on account of the same, let the petitioner abovenamed, who has fair antecedents, be released on anticipatory bail....". "

30. Reference to the case of **“Dwakardas Fafat”** and **“Siddharam Satlingappa Mhetre”** (*supra*) cited by the learned Sr. Counsel for the Petitioners is only to canvass the point that custodial interrogation is not necessarily required if the accused had joined investigation and even if he/she or they did not confess, it cannot be said that it is a sign of non-cooperation with the investigation. In the case in hand, records would show that the Petitioners herein have already given their respective statements before the IO and as such, it is not a case where the Petitioners have not joined investigation with the IO. However, in the light of the statement of the Informant/wife of the deceased that the three Petitioners herein have been witnessed to be part of the mob who had assaulted the deceased, (record would show that the Petitioner Phos Muksor is also known as Khrew Muksor), the IO is required to thoroughly question them on all aspect of the matter, which unfortunately has not been done till date. It is also observed that one Shri Se Shadap who was named in the FIR was also questioned by the IO, but why he was not taken in custody cannot be understood by this Court. The IO has to look into this aspect as well as was held in the case of **“Jamuna Chaudhuri”**(*supra*), that is, to bring out the real unvarnished truth.

31. Another contention of the learned Sr. Counsel for the Petitioners is that pre-trial detention should not be punitive in nature but usually to

secure the attendance of the accused person for trial to ensure that he does not hamper or tamper with the evidence or witnesses and in support of this the case of “*Sanjay Chandra*” and “*Dataram Singh*”(supra) was cited has relevance, however, in the particular facts and circumstances of this case, where the wife of the deceased has clearly stated that she was threaten by one Se Shadap who was part of the mob which included the Petitioners herein, would also cement the apprehension of a possibility of hampering and tampering of evidence and witnesses by the Petitioners herein.

32. The case of “*Prabhakar Tewari*”(supra) was also referred to by the learned Sr. Counsel to impress upon this Court that factors like seriousness and gravity of the alleged offences by themselves cannot be a ground to refuse bail is also valid, except that here, as observed above, the fear of the Informant/witnesses being threaten cannot be rule out at this juncture, thus making the seriousness and gravity of the offence, which is incidentally that of murder a prime factor to be considered by this Court while considering the prayer for grant of bail.

33. As to the contention of the learned Advocate General that there has been a serious breach in the fact that the Petitioners have been granted access to the contents of the case dairy since the copy of the FIR annexed by them in their respective applications also contained notings of the IO and Officer Incharge, Nartiang PS, this Court is of the view that this argument is not valid as the reply of the learned Sr. Counsel to this is that the same was a certified true copy applied from the Prosecuting Inspector’s Office, which was supplied to the Petitioners in that form. This argument is believable and there is no evident that the case dairy has been accessed by anyone other than the IO. The matter is therefore laid to rest at this juncture.

34. In view of the above, this Court having considered the import of the judgments referred to by the parties and while referring only to those having relevance to the case in hand, the rest are not required to be

discussed as from the materials available, this Court is not inclined to allow these three applications herein. The same is dismissed as devoid of merit.

35. The interim bail granted is hereby discharged

36. Registry is directed to return the case dairy.

37. Matter disposed of. No cost.

Judge

Meghalaya
28.05.2021
“D. Nary, PS”

