

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.REV.P. 600/2008 & CRL.M.A. 12890/2008

Reserved on: 4th February 2009

Date of decision: 17th February 2009

THOUNAOJAM SHYAMKUMAR SINGH Petitioner
Through: Mr. K.K. Sud, Senior Advocate with
Mr.Ghanshyam Sharma and
Mr.Alok Rai, Advocates.

versus

STATE Respondent
Through: Mr.Pawan Bahl, APP for the State.

BAIL APPLN. 2165/2008

THAOUNAOJAM SHYAMKUMAR SINGH Petitioner
Through: Mr. K.K. Sud, Senior Advocate with
Mr. Ghanshyam Sharma and
Mr.Alok Rai, Advocates.

versus

STATE (GOVT OF NCT OF DELHI) Respondent
Through: Mr.Pawan Bahl, APP for the State.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be
allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

JUDGMENT

17.02.2009

S. Muralidhar, J.

1. The petitioner in both these cases is one of the accused in FIR No. 70 of 2006 registered at Police Station Special Cell under Sections 121/121-A/122/ 123, 419, 420, 468 and 471 IPC, Sections 18, 19 and 20 of the

Unlawful Activities (Prevention) Act, 1967 [UAPA] and Sections 3 and

9 of the Official Secrets Act, 1923(OSA).

2. By an order dated 25th July 2008, the learned Additional Sessions Judge (ASJ), Delhi passed an order on charge holding that prima facie the offences under Sections 120B, 474, 419, 468, 471 IPC, Sections 3 and 9 OSA read with Sections 18, 19 and 20 UAPA are made out against the petitioner. Subsequently charge was framed against the petitioner by the learned ASJ by a separate order dated 2nd December 2008. Aggrieved by the order on charge dated 25th July 2008, the petitioner has filed Crl. Rev. (P) No. 600 of 2008.

3. In Bail Application No. 2165 of 2008 the petitioner seeks regular bail. Both petitions have been heard together and are being disposed of by this common order.

4. The case of the prosecution is that on 2nd October 2006 at about 11 a.m specific information was received that high ranking two terrorists of the banned United National Liberation Front (UNLF) were going to Kathmandu from IGI Airport, Delhi by an Indian Airlines Flight No. IC 813. One sympathizer of the organization was also with them. The information was recorded in the daily diary. A team of police officials was constituted under the supervision of Inspector Mohan Chand Sharma. The raiding party rushed to IGI Airport at around 1.10 pm. There the police officials came to know that three passengers, Maibam Milan Singh, Shyam Kumar (the petitioner) and R.K. Romeo Singh had been off loaded by the airline. The said three persons were intercepted as

they emerged from the airport. M.K. Singh and R.K.Romeo Singh were found in possession of fake identity cards apparently issued by the Forest Department, Government of Manipur, Imphal. It was also revealed that they were travelling to Nepal on the basis of those fake identity cards. The three persons were then brought to the office of Special Cell where they were interrogated. Their luggage was also checked. During interrogation, it was revealed that the actual name of M.Milan Singh was M.J.K. Singh. The real name of R.K. Romeo Singh was found to be P.G. Singh. The name of the third person was revealed as Thounaojam Shyamkumar Singh (T.S.K. Singh).

5. The charge sheet filed at the conclusion of the investigation sets out the further case of the prosecution as under:

“In order to further verify the facts, all the three were brought to the office at Special Cell/NDR where a thorough interrogation was carried out from them and the search of their luggage was also carried out. During interrogation, real name of M. Milan Singh was revealed as Moirangthem Jayanta Kumar Singh S/o Mirangthem Ananda Singh R/o Wangkhei Keithel Asangbi PS Porompat Imphal East, Manipur, real name of Mr. R.K.Romeo Singh was revealed as Phanjoubam Ghanshyam Singh S/o Ph Bhorot Singh R/o Wangkhei Konsam Leiki, Imphal East, Imphal and the name of the third person was revealed as Thounaojam Shyam Kumar Singh S/o Th. Binoy Kumar Singh R/o Uripok Yambem Leiki, Imphal West Manipur. During the search of baggage of Moirangthem Jayanta Kumar Singh, one Pendrive was recovered. During the search of baggage of Phanjoubam Ghanshyam Singh, one CD (Compact disk) was recovered. The recovered Pen Drive and CD were

scrutinized and after scrutiny it was revealed that the pen drive contains the information regarding deployment of Army, BSF, CRPF etc. in Manipur, the details of their outfit members, details of Arms/ammunition and explosives etc. available in their organization (AK-47, 6 Assault rifles, missiles, RDX etc.) The scrutiny revealed that their organization UNLF was maintaining full fledged brigades/battalions of their militants on the parallel lines of Indian Army and these members of the banned militant organizations were even being paid salaries according to different ranks. Scrutiny of the CD reveals about their training camps, strength of the organization, locations and deployment etc in the State of Manipur. The print outs of the data stored in the pen drive have been taken into police possession through a seizure memo. The scrutiny of the Pen drive, CD and interrogation of Moirangthem Jayanta Kumar Singh & Phanjoubam Ghanshyam Singh who are self-styled Lieutenant Colonel's in civil wing and Defence wing respectively, revealed that both were engaged in waging war against the nation and carrying out unlawful activities in the State of Manipur and in the consequence they had come to Delhi to set up a base for their organization in Delhi. Thounaojam Shyam Kumar Singh R/o above is also involved in harbouring them, aiding them financially to carry out their unlawful activities, thereby conspiring with them to wage a war against nation."

6. As regards the precise role of the petitioner here the charge sheet states as under:

"During interrogation, accused Thounaojam Shyam Kumar Singh disclosed that he is providing logistic and other supports to the members of banned terrorist outfit KYKL (Kanglei YawolKanna Lup) and UNLF. He is an active member of Indian National Congress-Congress-I in

Manipur. He has contested for MLA in 2001 from Nationalist Congress Party (NCP) and in 2002 from Congress-I. After completing graduation in 1993, he opened a school in his village to teach village children by investing Rs. 3000/-. He run this school for 2 years and closed it when he got married in 1995 as there was no profit in running school. Thereafter, he started farming in village along with other brothers and worked as artisan upto 1997. Thereafter, he engaged in social working in political field and started roaming in villages for support. During this period, many underground terrorists met him as there were the camps of PLA, UNLF, KYKL, KUKI etc. He started gaining support of local people as well as terrorist outfits and in the year 1999, he joined Nationalist Congress Party-Sharad Pawar-P.A. Sangma group as an active member and in 2000, contested the election for MLA as NCP candidate and lost. In November 2001, he left NCP and joined Congress (I) as member. In the year 2002, he contested for Andro seat as MLA from Congress (K) and lost. After losing election, he started working as a sub-contractor and got the job of constructing road in Andro area having estimated cost of 48 lakhs, he got this contract through political influence. Thereafter, he started getting more and more contracts. One of his village person namely Loya, a commander of KYKL (killed) was his very close friend before joining militancy. After joining KYKL, Loya used to talk him on telephone. During short span, he came close to other members of KYKL. In March 2003, some KYKL people came at village including Langanba and talked him about his previous election etc. and also promised him to help in next election if he provided them safer hideout and logistic help and he agreed. Thereafter, he developed close relation with KYKL people. In April 2003, the KYKL people kidnapped a businessman namely Manoj Kumar Sethi (Non-Manipuri) –

a businessman and demanded a ransom of Rs. 1 crore, when the demand of KYKL people was not fulfilled, KYKL people killed him. He was also named in this case and arrested along with KYKL people namely Jadumani and 4 more people for assisting in kidnapping. The NSA was also imposed upon him for this heinous crime. He is not having any contractor licence but due to political influence and support of the members of various terrorist outfit working as sub-contractor. On 26th August 2006, he visited Kolkata to get a contract for the Manipur House, Kolkata. While staying at Staden Hotel, he met SS Lt. Col. Romeo through one Langanba KYKL Sec. Research & Publicity. They had come in Kolkata for a meeting with other outfit members to jointly wage war against India. Lamngamba asked him to bring two ladies of KYKL outfit from Guwahati to Delhi and he brought them to Delhi and stayed at Swisden Palace, Karol Bagh. He contacted with Langamba and the sameday Langamba and Romeo came and met with him in Hotel. On 9-10 September 2006, SS Lt. Col. Romeo R/o Column No. 3 contacted him over phone and asked to visit Kathmandu for arranging a hotel. With the apprehension that the UNLF people would assist him in election commencing in 2007, he went to Kathmandu on 24th September, 2006 and searched two hotels-Tibet Inn and Saligram Apartment Hotels and returned back on 25th September and conveyed the details of Hotels in Kathmandu. Further Romeo asked him that he is arranging the tickets from Guwahati-Delhi for 01.10.06 and Delhi-Kathmandu. Further, Romeo asked him that he is arranging the tickets from Guwahati-Delhi for 01.10.06 and Delhi-Kathmandu for 02.10.06 to visit Nepal. On 01.10.06, he along with Romeo and Jayanta reached Delhi. On 02.10.06, they were apprehended at IGI airport, Delhi. The accused Thounaojam Shyam Kumar was found involved in heinous cases in Meghalaya and Manipur. During

investigation, the identity cards of Forest Department, Manipur seized from accused Moriangthem Jayanta Kumar Singh and Phanjoubam Ghanshyam Singh both R/o Colum No.3 were sent for verification to Forest Department, Sanjenthong, Imphal and the report from the office of Principal Chief Conservator of Forests, Imphal Manipur has come and both seized identity cards are found fake. A request regarding confirmation of arrival/departure of accused Thounaojam Shyam Kumar Singh R/o Column No. 3 to Nepal before October 2006 to fix up the venue for meeting of UNLF outfit was made to. The Assistant Director, CFB, MHA, GOI, Delhi and its report has arrived. As per report, accused Thouanjam Shyam Kumar Singh left India on 24.09.06 via Delhi via Kolkata by Flight No.IC-747 and came to India on 25.09.06 via Delhi by Flight No. IC-814. A request regarding verification of seized air tickets dated 02.10.06 from Delhi to Kathmandu (Nepal) was moved to the office of “The Manager, Agency Section, Indian Airlines Limited, Airlines House, 39-Chitranjan Avenue, Kolkata” and its report has arrived. As per report, the air tickets of accused Thouanjam Shyam Kumar Singh and Phanjoubam Ghanshyam Singh were sold on 20.09.06 and air ticket of accused M. Jayanta Kumar Singh was sold on 21.09.06 from M/s Green Valley Enterprise, P.O.-Naharlangun (Itanagar) Arunachal Pradesh.”

7. The seized documents were sent to the Office of the Director General, Military Intelligence, GS Branch, Army Headquarters, New Delhi for expert opinion. The charge sheet in this regards states as under:

“The opinion on secret documents has been received from Military Intelligence through Lt. Col. P. Shreeram GSO-I (Int.) for GOC-IN-C Headquarters, Eastern Command Pin-908542 C/o 99 APO vide No. 103710/Manipur/GSI (A)

dated 30.11.06 which is reproduced below:- (a) The nature of the contents can be termed as “classified”. (b) The persons possessing the documents *ibid*, lack the authority to possess and documents and clear documents or know its content, they may be charged accordingly. (c) The information gleaned from the documents is connected with security and integrity of the country and hence the dissemination to any unauthorized entity considered as breach of security. (d) In our opinion the information contained in the document is connected with security/defence matters of the country and hence its importance to adversaries/terrorists including UNLF is axiomatic.”

Submissions of Counsel

8. The contentions raised by the petitioner in Crl. Rev. (P) No. 600 of 2008 are to the effect that no case is made out against him for framing the charges under of the provisions noticed hereinbefore. Mr.K.K.Sud, learned Senior Counsel for the petitioner submits that the closeness of the petitioner with the other two accused persons who were in possession of the so-called secret information was a casual one. According to him, there is nothing in the charge sheet when read as a whole which points to the petitioner actually financing the operations of the other two accused or of the organization UNLF. He then submitted that since the pen drives were not recovered from the petitioner, the charges under Sections 18 to 20 UPA were not justified. It is submitted that the use of fake identity cards was really to no effect since entry into Nepal did not require any visa. The mere booking of tickets from one travel agent did not also point to the existence of any conspiracy or the commission of

any terrorist act as defined under Section 15 of the UAPA. In any event when the learned ASJ found that not even a prima facie case was made out against the petitioner for the offences under Sections 121, 121-A, 122 and 123 IPC, the question of invoking the provisions of the UAPA did not arise. It is vehemently argued that the information contained in the pen drives pertained to the UNLF itself and therefore not even the bare ingredients of the offence under Section 3 OSA was made out. Since there was no material to show the abetment by the petitioner of the commission of the offence under Section 3 OSA, the offence under Section 9 OSA was not made out. Mr. Sud addressed elaborate arguments to persuade this Court to hold that there was no case made out, even prima facie, against the petitioner for the offence of 'harbouring' as contemplated under Section 19 UAPA read with Sections 52-A and Section 212 IPC. The decision in *Kalp Nath Rai v. State (1997) 8 SCC 732* is relied upon. A reference is made to para 19 of the charge sheet which refers to substantial amounts having been contributed by the petitioner to the UNLF. It is submitted that there is no material at all to substantiate such allegation. Mr. Sud also points out that the charge drawn up by the order dated 2nd December 2008 does not square with the order on charge dated 25th July 2008.

9. As regards the plea for grant of regular bail, Mr. Sud refers to the earlier order passed by this Court on 5th February 2007 rejecting the petitioner's application for regular bail and the subsequent order dated 14th March 2007 granting him interim bail. When the matter went back

before the learned Special Judge (ASJ), the plea of the petitioner for

regular bail was again rejected by an order dated 10th September 2008. However, by the order dated 23rd September 2008, the learned ASJ continued the interim bail on medical grounds since it was stated that at that time the petitioner was an indoor patient in the Regional Institute of Medical Sciences, Imphal. This interim bail was to expire on 11th November 2008, by which time on 20th October 2008 the present Bail Application was filed by the petitioner in this Court.

10. Mr. Sud submits that whatever may have been the position as regards the petitioner being on interim bail earlier, when his Bail Application No. 2368 of 2007 was dismissed as withdrawn by this Court on 28th August 2008 and all interim orders stood vacated, it was only the order dated 10th September 2008 passed by the learned ASJ and the orders thereafter passed by this Court in the present application that were required to be examined. It may be mentioned here that in the present bail application by an order dated 11th November 2008, the interim bail granted by the learned ASJ on 23rd September 2008 was extended till 17th November 2008 “solely for the reason that the counsel is unwell”. Thereafter by subsequent orders dated 17th November 2008, 20th November 2008, 24th November 2008, 25th November 2008, 1st December 2008, 2nd December 2008, 5th December 2008, 15th December 2008, 16th December 2008, 17th December 2008 and 16th January 2009, the interim bail was kept extended for one reason or the other.

11. After change of roster the bail application was placed before this Court on 23rd January 2009 when again an adjournment was sought till

27th January 2009 on the ground that Mr. Sud, the learned Senior Counsel, was unwell. As a last opportunity, the case was adjourned to 2nd February 2009 when arguments were concluded both on the bail application as well as the criminal revision petition.

12. Mr. Sud, makes an earnest plea for grant of regular bail to the petitioner. It is stated that the petitioner was elected as a Member of the Legislative Assembly in the elections held to the Manipur State Legislative Assembly in March 2007 on the ticket of the Manipur Peoples' Party. The petitioner was subsequently elected as the Deputy Speaker of the Manipur State Legislative Assembly since then. Mr. Sud submits that the petitioner being an MLA and a Deputy Speaker of the Manipur Legislative Assembly cannot, but be expected to comply with the court orders and not avoid the process of law. He points out that the petitioner was in custody from 2nd October 2006 till 18th March 2007 when he was released on interim bail. He has already surrendered his passport. He submits that the petitioner will appear before the trial court on every date, fully cooperate in the conclusion of the trial and not seek unnecessary adjournments. He submits that the trial is already underway and no such prejudice would be caused if on the petitioner undertaking to appear on all the dates of trial, he is enlarged on bail. It is submitted that as a holder of a public office, the petitioner would not avoid attending the trial court, subject of course to any contingency for which he will seek specific orders from the trial court. Although he does not dispute the fact that the petitioner has been only on interim bail for nearly two years now

Mr. Sud submits that the petitioner has never violated any of the

conditions on which interim bail was granted to him. Reliance is placed on the judgments in *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra* (2005) 5 SCC 294 and *Jayendra Saraswathi Swamigal v. State of Tamil Nadu* (2005) 2 SCC 13.

13. The plea of the petitioner is vehemently opposed by Mr. Pawan Behl, the learned APP. He points out that barring the period between 2nd October 2006 and 18th March 2007 when he was in custody, the petitioner never submitted to the process of law since he was released on interim bail by the order dated 14th March 2007. According to him despite there being no specific order continuing his interim bail during the period between 1st November 2007 and 18th September 2008, the petitioner did not surrender. He submits that it is needed extraordinary that despite this Court rejecting the petitioner's earlier Bail Application No. 2368 of 2007 for regular bail as withdrawn, his interim bail was continued from time to time for some reason or the other. He then points out that this position has continued even after his regular bail application was again rejected by the trial court on 10th September 2008. According to him, there is absolutely no warrant for continuing to extend such a benefit to the petitioner particularly given the gravity of the offence.

14. Mr. Behl adds that the mere fact that the petitioner is an MLA or a Deputy Speaker of the State Legislative Assembly of Manipur should not dilute the gravity of the offences which are extremely serious. He submits that the continued availability of the petitioner for the conclusion of the trial is absolutely essential, and if the petitioner is released on bail,

he will go back to Manipur and it is highly unlikely that he will be regular in attending the trial in Delhi. He may find one excuse or the other to avoid presenting himself for the trial. He submits that the possibility of the petitioner influencing witnesses while continuing to hold an important public office cannot be ruled out. Also, the mere fact that the petitioner has complied with the conditions of interim bail, cannot really be a factor to grant him regular bail. The circumstances that should weigh with the court for grant of regular bail are different.

Crl. Rev. P No.600 of 2008

15. This Court has considered the submissions of the petitioner both on the question of charge as well as the grant of regular bail. This Court first proposes to deal with the question of the validity of the order on charge insofar as the petitioner is concerned. The parameters that should weigh with the trial court while passing the order on charge have been well settled in the several judgments of the Supreme Court. The leading judgment in this regard is ***Kanti Bhadra Shah v. State 2001 (1) AD SC 1*** where it was held:

“12. If there is no legal requirement that the trial Court should write an order showing the reasons for framing a charge, why should the already burdened trial Courts be further burdened with such an extra work. The time has reached to adopt all possible measures to chalk out measure to avert all road-blocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail paced progress of proceedings in trial Courts would further be slowed down. We are coming

across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order had been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial.”

Also the decision in *Hem Chand v. State of Jharkhand* (2008) 5 SCC

113 the relevant portions of which read as under (SCC @ p.115-116):

“9. It is beyond any doubt or dispute that at the stage of framing of charge, the Court will not weigh the evidence. The stage for appreciating the evidence for the purpose of arriving at a conclusion as to whether the prosecution was able to bring home the charge against the accused or not would arise only after all the evidence is brought on records at the trial. The documents whereupon the appellant intended to rely upon were: (i) an order of assessment passed by the Income Tax Authority and (ii) his declaration of assets.

13. The learned Counsel for the CBI is, thus, correct in his submission that what has been refused to be looked into by the learned Special Judge related to the documents filed by the appellant along with his application for discharge. The Court at the stage of framing charge exercises a limited jurisdiction. It would only have to see as to whether a prima facie case has been made out. Whether a case of probable conviction for commission of an offence has been made out on the basis of the materials found during investigation should be the concern of the Court. It, at that stage, would not delve deep into the matter for the purpose of appreciation

of evidence. It would ordinarily not consider as to whether the accused would be able to establish his defence, if any.”

16. Keeping the above principles in mind when one examines the charge sheet and then the order on charge, it is seen that the learned ASJ has correctly appreciated the probative value of the materials to come to the conclusion that the petitioner should be tried for the offences mentioned hereinbefore. Significantly it is not as if the learned ASJ has mechanically reproduced the charge sheet without discussing whether there is prima facie material for proceeding against the petitioner. For instance the learned ASJ has concluded that no case is made out against any of the accused for the offences under Sections 121/121-A/122/123 IPC. It was sought to be contended by Mr. Sud that once the petitioner is discharged for the offences under Sections 121/121-A/122/123 IPC, he should be automatically be discharged also for the offences under Sections 18 and 19 UAPA. This Court is unable to accept this submission. The definition of a terrorist act for the purposes of UAPA is wide enough to include the acts for which the petitioner has been charged. It is not possible to conclude on a reading of the charge sheet that no case at all is made out against the petitioner for being tried for the offences under Section 18 and 19 UAPA.

17. The argument that there is nothing at all to indicate the involvement of the petitioner for the offence under OSA only because no recovery was made from him also cannot be accepted. It is a whole chain of events

that has been traced out by the police. When taken as a whole it appears that the case of the prosecution is that all these accused including the petitioner were acting in criminal conspiracy in gathering information not specific to the activities of the UNLF but about the strategic positions of the Indian armed forces and paramilitary forces. It cannot, therefore, be said that the offences under Sections 3 OSA and 9 OSA are not made out at all.

18. Likewise, this Court is not satisfied that no case is made against the petitioner for the offence under Section 19 UAPA. As an example, the prosecution has found that the airline tickets of all three accused have been paid from the same source and booked through the same agent. How far this shows the existence of a conspiracy and whether the petitioner by funding the activities of the UNLF and the two co-accused was liable under Section 19 UAPA would indeed be a matter for trial. However, at the present stage it is not possible, in the light of these materials, to conclude that no case at all is made out against the petitioner for these offences.

19. Any excessive discussion on the materials on record might in fact prejudice the cause of the petitioner at the subsequent stage. Even the above discussion was necessitated only because of the excessive arguments addressed by Mr. Sud on these aspects. It is nevertheless clarified that none of the above observations touching upon the merits of the case or any other observation made in this order on the evidence is intended to influence the decision that may be arrived at by the trial court

upon an independent assessment of the materials as well as the evidence that comes on record.

20. For the aforementioned reasons, this Court finds no merit in criminal revision petition and it is accordingly dismissed. The application is also dismissed.

21. Before dealing with the bail application, one another aspect needs to be adverted to. It is seen from the record that when the order on charge was drawn up by the learned ASJ on 2nd December 2008, the petitioner was himself not physically present in that court. He was represented by a lawyer and the learned ASJ followed the procedure permitting the lawyer to plead on behalf of the petitioner whether he was guilty or not. For instance the order dated 2nd December 2008 passed by the learned ASJ records the following in response to the question posed to the petitioner whether he pleaded guilty or not: “I, Ghanshyam Sharma, Advocate for accused TSK Singh, who is in Imphal because of medical reasons, under instructions and as per specific authority letter Mark X, wherein he had specifically stated “I pleads not guilty and claim trial” and accordingly, I signed this charge on his behalf.”

22. In response to a query by the Court whether such a procedure was permissible under the CrPC, Mr. Sud candidly states that neither under Section 228 or any other provision of the CrPC is there a provision permitting the lawyer for the accused to plead on behalf of the accused in

response to the charge. He submits that in the peculiar facts of the

present case such procedure was perhaps not improper. Nevertheless, without prejudice to his contentions he submits that the petitioner is willing to appear before the learned ASJ on any date that this Court directs and the order on charge can be passed by the learned ASJ afresh vis-à-vis the petitioner in terms of the order on charge.

23. This Court disapproves the practice adopted by the learned ASJ in permitting the lawyer for the accused to plead on his behalf to the charges framed. No such procedure is known to law. Section 228 CrPC does not permit such a procedure. A plain reading of Section 228 (2) CrPC shows that when the charge is framed it has to be read out and explained to the accused and has to be heard and understood by the accused himself and not merely by his lawyer. This is a statutorily mandated dialogue between the trial judge and the accused without the intervention of anyone, including the lawyer for the accused. The learned trial judge will have to be satisfied personally that the accused has understood the charges and has to hear (or be communicated) the plea of the accused by the accused himself. This is a critical stage of the trial because if at this stage the accused pleads guilty then the trial follows a different course. There is nothing in Section 228 CrPC which even remotely suggests that the accused need not be personally present in the Court when the charges are being read out and explained to him. There can be a situation where the charges have to be explained to the accused in a language understood by him. The accused is asked by the court to make up his mind, after understanding the charges against him, whether he wishes to plead guilty or not. This is a solemn moment and places an

onus on the accused. This is really the first time that the accused speaks to the court. The CrPC mandates that that speech be not delegated by the accused to his power of attorney or lawyer. While interpreting the corresponding provisions of an earlier version of the present CrPC the Bombay High Court held likewise in *Sursing (1904) 6 Bom LR 861* and *King Emperor v. Triambaka (1901) 3 Bom LR 489*.

24. Although in *Banwari v. State of U.P. AIR 1962 SC 1198* and *Ashok Kumar v. State (Delhi Admn.) 1993 Cri LJ 3629 (Del)* it was held that non-compliance with the provisions of Section 228 will not vitiate the trial unless prejudice is shown to have been caused to the accused, the failure to frame a charge in the presence of the accused is an irregularity which ought to be avoided. In the facts of the instant case, considering the gravity of the charges, such a procedure ought not to have been permitted by the trial court.

25. Therefore, only to that extent and insofar as the petitioner is concerned, this Court is constrained to set aside the order dated 2nd December 2008 passed by the learned ASJ drawing up the charge. Without in any way affecting the validity of the order on charge dated 25th July 2008, the respondent will ensure that the petitioner remains present before the court of the learned ASJ either on the next date when the matter is fixed before that court or as soon thereafter as is practicable to receive the charges which will be drawn up and the plea of the petitioner recorded by strictly following the procedure set out in Section 228 CrPC.

Bail Application No. 2165 of 2008

26. Turning to the bail application, this Court finds that the interim bail was first granted to the petitioner by the order dated 14th March 2007 of this Court for a very specific reason concerning his having to report to the Manipur Legislative Assembly within 60 days of being elected for otherwise he would have forfeited his membership of that legislative assembly. That reason obviously did not subsist beyond the said period. The continuation of his interim bail thereafter was not on account of any particular reason. Thereafter the petitioner's application for regular bail was rejected by the learned ASJ by a detailed order dated 10th September 2008. The warrants for his arrest were kept in abeyance on the undertaking of his lawyer that he would be produced before the court on 18th September 2008. However, an application was soon thereafter moved on 12th September seeking interim bail on medical grounds. By the order dated 23rd September interim bail was granted by the learned ASJ on medical grounds till 11th November 2008. Thereafter the interim bail was continued not on account of the ill-health of the petitioner but that of his counsel.

27. If one were to draw an analogy with an order of anticipatory bail, then in light of the decisions of the Supreme Court in *Adri Dharan Das v. State of West Bengal (2005) 4 SCC 303* and *Sunita Devi v. State of Bihar (2005) 1 SCC 608*, the position regarding grant of interim bail cannot be any different. There cannot be a continuation of an order of interim bail for a period of two years as that would contradict the very nature of such an order which is a purely temporary relief for a limited

duration and for a specific purpose. Given the gravity of the offences in the instant case, such a privilege ought not to have been granted to the petitioner. Be that as it may, the fact that the petitioner complied with the conditions for interim bail is really not something that should weigh with this Court as being in his favour when it considers the question whether he should be granted regular bail.

28. The fact that the petitioner is the Member of the Manipur State Legislative Assembly or its Deputy Speaker does not necessarily impress this Court as regards his plea for regular bail. He might have got elected as an MLA during the period he was in custody but what should primarily be considered relevant for the purposes of his application for regular bail is the gravity of the offences. The Supreme Court has in *State of U.P. v. Amarmani Tripathi (2005) 8 SCC 21* explained that in deciding about the nature and gravity of the charge as a relevant factor for grant of bail, the court should undertake a brief examination of the evidence to be “satisfied about the existence of a prima facie case.” Undoubtedly, the offences with which the petitioner is charged are grave. Moreover, the likely punishment if convicted is severe. It does not, therefore, impress this Court that since the petitioner holds a public office notwithstanding the gravity of the offence he should be enlarged on bail.

29. The other reasons advanced by the learned Senior Counsel for grant of regular bail to the petitioner do not make it to be an exceptional case

for grant of liberty to a person who has, given the gravity of the offence,

hardly undergone any pre-trial detention. In fact, as noticed hereinbefore, the petitioner has already enjoyed the facility of interim bail for an unusually long period. If this is only for the reason that he happens to be an MLA or a Deputy Speaker, then it might undermine the legal system as it might be viewed as treating high profile accused leniently. It is axiomatic that persons holding public offices while being charged with grave offences must be held to even higher standards of accountability to the law. The apprehensions of the learned APP about the petitioner being able to influence the witnesses if enlarged on bail cannot be said to be unfounded. A factor the Court will have to account for is that the petitioner is an important political figure in Manipur where he is likely to be present when on bail barring the dates of trial.

30. Keeping in view all the above facts and circumstances, this Court is not inclined to enlarge the petitioner on regular bail. Bail Application No. 2165 of 2008 is, therefore, rejected. Needless to say that the interim bail granted to the petitioner comes to an end today. All applications stand disposed of.

31. Crl. Rev Petition No. 600 of 2008 and the application stand dismissed. The learned ASJ will ensure that the directions contained in para 24 are strictly complied with. A certified copy of this order be sent to the learned ASJ concerned forthwith.

S. MURALIDHAR,J

FEBRUARY 17, 2009

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