

IN THE HIGH COURT OF MANIPUR
AT IMPHAL
MC(Bail Application) No. 1 of 2023
Ref: Bail Application No. 19 of 2022

Officer-in-Charge, City Police Station, Imphal West District, Manipur

..... Applicant/s

- Versus -

1. Mr. Mungtung Leithil Charanga, aged about 33 years, S/o Mungtung Modou Charanga, resident of Khambang Khunou, Chandel District (Now Tengnoupal), Manipur.
2. Ch. Konai Maring, aged about 36 years, S/o Modun Maring of Kambang Khunou Village, Moreh Police Station, Chandel District, Manipur.

.....Respondent/s

B E F O R E
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the petitioner : Mr. H. Samarjit, PP
For the respondents : Mr. Mr. Jiaul Haque, Advocate
Date of hearing : 13.03.2023
Date of Judgment and Order : 11.04.2023

JUDGMENT & ORDER (CAV) V

[1] The respondent No. 2/accused No. 2 (respondent No. 1 is younger brother of respondent No. 2) was arrested along with co-accused on 04.06.2022 in connection with FIR No. 61(6)2022 CITY-PS u/s 21(c)/29 ND & PS Act, 1985 and from their possession 658 gms. of suspected

Heroin No. 4 was recovered. Vide order dated 19.07.2022 in Cril.Misc.(B)Case No. 162 of 2022, the Ld. Special Judge (ND & PS), Manipur at Lamphelpat rejected the bail application filed by the respondent No. 2 through respondent No. 1 on the ground that respondent No. 2 could not explain his presence at the time of his arrest along with accused No. 1. Thereafter, the respondent No. 2 approached this Court by way of bail application No. 19 of 2022 under Section 439 of Cr.P.C. read with Section 37 of the ND & PS Act.

[2] Vide judgment and order dated 02.11.2022, this Court granted bail to respondent No. 2 where it was held that as per the seizure memo, recovery of the contraband was from accused No. 1 and only mobile was recovered from him. It was held at para 19 that no contraband was seized from him. The relevant para 19 is reproduced herein below:

“19. In the absence of proof to connect accused No. 2 into the alleged crime, it cannot be said that accused No. 2 involved in the commission of the crime. It is to be pointed out that no recovery was made from accused no. 2. In this regard, the law is if no recovery was made from the accused person, the Court ought to consider the same and grant the accused the benefit of bail. As stated supra, no contraband was seized from accused no. 2 by the Investigating Officer or any of the other police personnel. Therefore, this Court is of the prima facie view that accused No. 2 has established his case for grant of bail.”

[3] While granting bail, this Court laid down certain conditions at para 30 which reads as under:

- “30.(i) Accused No. 2 shall not leave the place of his residence without permission of the Court and shall ordinarily reside at a place of his residence and the complete address of such place shall be furnished to the Special Judge, Special Court (ND & PS), Manipur, Lamphelpat, at the time of release.
- (ii) Accused No. 2 shall appear before the respondent police daily at 10.00 a.m. for a period of fifteen days and thereafter shall appear before the learned Special Judge, Special Court (ND & PS), Manipur, Lamphelpat weekly once i.e. every Monday at 10.30 a.m. until further orders.
- (iii) If accused no. 2 has passport, he shall also surrender the same to the Special Judge, Special Court (ND & PS), Manipur, Lamphelpat.
- (iv) Accused no. 2 shall also report before the Border Affairs Police Station on the first Monday of every month at 10.00 a.m.
- (v) Accused no. 2 shall not indulge in any criminal activities during the period of suspension of sentence.
- (vi) The Border Affairs Police is directed to monitor accused no. 2 and if they find accused no. 2 involved in any criminal activities, the Border Affairs Police is at liberty to bring it to the notice of this Court through the Public Prosecutor.

- (vii) Accused no. 2 shall not contact nor visit nor threaten nor offer any inducement to any of the prosecution witnesses.
- (viii) Accused no. 2 shall not tamper with evidence, nor otherwise indulge in any act or omission that would prejudice the proceedings in the matter.
- (ix) Accused no. 2 is directed to co-operate the trial court for early disposal of the case.
- (x) Accused no. 2 shall not leave the jurisdiction of the court.
- (xi) It is clarified that if accused no. 2 misuses the liberty or violate any of the conditions imposed upon him, the prosecution shall be free to move this Court for cancellation of the bail.
- (xii) The trial court is directed to expedite the trial and conclude the same within a period of six months from the date of receipt of a copy of this order.
- (xiii) Any observations made hereinabove shall not be construed to be a reflection on the merits of the case and shall remain confined to the disposal of the present bail petition.”

[4] Thereafter, the Officer-in-Charge, City Police Station filed the present application being MC(Bail Application) No. 1 of 2023 [Ref: Bail Application No. 19 of 2022] for cancellation of the bail granted vide judgment and order dated 02.11.2022 in Bail Application No. 19 of 2022 passed by this Court, as the respondent no. 2 has violated the condition nos. (i), (ii), (iv) & (xi). It is stated that the OC, City Police Station sent a WT

message dated 11.11.2022 to the OC, Tengnoupal Police Station to verify whether respondent no. 2/accused no. 2 was available at his residence or not in order to ascertain this OC and one S.I., namely Ashem Biren Singh, Tengnoupal Police Station along with police team went to his house but accused was not found at his residence and his house was found under lock and key. It is stated that copies of the photographs of accused house under lock and key are enclosed along with the present application. It is prayed that the bail may be cancelled as the respondent no. 2/accused no. 2 has violated the conditions imposed by this Court.

[5] Vide order dated 23.01.2023, this Court issued notice and Mr. Jiaul Haque, learned counsel has entered appearance on behalf of the respondents.

[6] The respondent no. 2 filed a reply to the application filed by the applicant. It was stated that the respondent no. 2/accused no. 2 denies the averments made in the application moved by the OC, City-PS for cancellation of bail. It was further stated that he has never left his place of residence and he was not informed as to when police would come to his place. The Respondent no. 2, who studied upto class – 3, works as cowherd (manual labour) and farmer for the livelihood, hence he cannot always stay at home, as the same is the only source of income and work for him. The respondent no. 2 was at farm along with his wife when the police personnel came to visited and later on the same was informed to him by the villagers. But he did not knew the reason of their visit nor any

other villager was informed. It is also stated that the respondent no. 2/accused no. 2 has been appearing before the learned Special Court (ND & PS), Manipur at Lamphelpat on several days but the Court Staff gave their own dates as different from that mentioned in order dated 02.11.2022 passed by this Court. As a proof of appearance before the Special Court, the respondent no. 2/accused no. 2 annexed dates given by the staff of the Ld. Special Court on various dates. In addition, the respondent no. 2/accused no. 2 appeared before the City Police Station but he was instructed to appear before the Porompat Police Station and accordingly, he appeared before the Porompat Police Station. Further, the City Police Station also stated that documents and charge-sheet had been forwarded to the Court due to which he was not allowed to sign. Further, respondent no. 2/accused no. 2 also went to Border Affairs Police Station but as they were not aware of the case, they did not let him sign. It is stated that respondent no. 2/accused no. 2 is a sole bread earner of the house having a wife and 2 (two) children presently staying at Pallel. It is also stated that vide judgment and order dated 02.11.2022, this Court granted bail to him on merit, as no contraband was seized from him. Cancellation of bail in a matter where the accused is not involved, would be in violation of his personal liberty enshrined under Article 21 of the Constitution of India. It is also stated that he was in custody for 149 days for a crime which he never have committed. It is prayed that the application filed by the OC, City Police Station may be dismissed.

[7] Heard Mr. H. Samarjit, learned PP for the applicant and Mr. Jiaul Haque, learned counsel for the respondents.

[8] Mr. H. Samarjit, learned PP for the applicant, draws the attention of this Court that respondent No. 2/accused No. 2 has violated the conditions No. (i), (ii), (iv) and hence, the present application is moved under condition No. (xi). It is stated that without the permission of the Court, the petitioner was not found at his residence and he was not appearing before the City Police Station. Thereafter, appeared before the Ld. Special Judge (ND & PS), Manipur at Lamphelpat weekly, but he failed to appear before the Border Affairs Police Station on the first Monday of every month at 10:00 a.m. and with the liberty given in para 30 (xi), the applicant moved the present application for cancellation of bail so that the respondent No. 2/accused No. 2 is prevented from misusing his right given by this Court and prayed for cancellation of the bail granted vide judgment and order dated 02.11.2022.

[9] Mr. Jiaul Haque, learned counsel for the respondents, submits that the absence of the respondent No. 2/accused No. 2 at his residence was unintentional and has been explained in the reply filed by him before this Court. Since the accused No. 2 is a manual labour and sole bread earner of the family, he has to work at his farm that is why his house was found under lock and key when police personnel visited his residence. However, he did not abscond from the jurisdiction of the Court or police. He was appearing before the Special Court as directed, however, the Court

staff gave him different dates and not as per given by this Court in the judgment and order dated 02.11.2022. Proof of his attendance is also annexed with the reply. It is also submitted that accused No. 2 was regularly appearing before the City Police Station and the Border Affairs Police Station but he was not allowed to sign. That is why he cannot submit the proof of appearance. It is prayed that the present application may be rejected and rejecting the bail application on a sole instance of having not found at his residence would amount to review the judgment and order dated 02.11.2022 passed by this Court on the ground that there was no prima facie material against the present accused No. 2.

[10] This Court have gone through the documents on record and considered the rival submissions of the learned counsel for the parties.

[11] It is also seen that as observed in para 19 of the judgment and order dated 02.11.2022, this Court observed that no contraband was seized from accused No. 2 by the Investigating Officer or other police personnel and as such, the bail was granted on this ground. On careful examination of the application filed by OC, City Police Station it seems that the present application was filed on a single instance of absence of the accused No. 2 at his residence. It is seen from the WT message dated 15.11.2022 issued by the Officer-in-Charge, NAB PS, Manipur to OC, City PS that accused No. 2 has not reported to NAB PS till date and he was not available when the police team visited his residence at Kambang Khunou. On the other hand, accused No. 2 submitted that he has been appearing

before the Court of the Ld. Special Judge (ND & PS), Manipur at Lamphelpat and he has been given dates for next appearing which is different from date fixed by this Court in the judgment and order dated 02.11.2022. From all these, it seems that the respondent No. 2/accused No. 2 has not completely absconded but he has been regularly appearing before the Ld. Special Judge (ND & PS), Manipur at Lamphelpat on the different date given by the Court staff. However, he has explained his absence before the City Police Station and NAB PS.

[12] This Court is of the opinion that as the accused No. 2/respondent No. 2 has been appearing regularly before the Ld. Special Judge (ND & PS), Manipur at Lamphelpat, there is substantial compliance of the conditions imposed by this Court in the judgment and order dated 02.11.2022 even though he has explained alleged non-appearance before the City Police Station and the Border Affairs Police Station (now NAB PS).

[13] In the circumstances and in absence of any grave violation of conditions imposed by this Court, the present application is dismissed. Condition (ii), it is modified as that accused No. 2 shall appear before the learned Special Judge (ND & PS), Manipur at Lamphelpat weekly once every Monday at 10:30 a.m. until further orders till the submission of charge-sheet and when charge-sheet is submitted, he shall appear before the Court on every date fixed by the Court for the proceedings. The accused No. 2 is also exempted from appearing before the City Police

Station and Border Affairs Police Station (now NAB PS) as mentioned in clause (ii) and (iv).

[14] With respect to the above observations, this Court is not obliged to cancel the bail granted.

[15] Send a copy of this order to the learned Special Court (ND & PS), Manipur at Lamphelpat and to the OC, City Police Station and Officer-in-Charge, City Police Station and NAB-PS for information.

JUDGE

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