

IN THE HIGH COURT OF MANIPUR AT IMPHAL

AB No. 22 of 2021

Md. Amiti @ Sahid Khan aged about 32 years, S/o Late Ithoi of Khergao,
P.O. & P.S. Porompat, Imphal East District, Manipur Pin No. 795005.

... Petitioner

- Versus -

1. The Officer-in-charge, Porompat Police Station, P.O. & P.S. Porompat, Manipur Pin No. 795005.
2. ASI, Md. Amjad Ali, Porompat Police Station, I.O. of the Case, Imphal East District, P.O. & P.S. Porompat, Manipur Pin No. 795005.

... Respondents

B E F O R E

HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the petitioner	:	Mr. Juno Rahman, Advocate,
For the respondent	:	Mr. H. Samarjit, P.P.
Date of Hearing	:	12.06.2023
Date of Judgment & Order	:	18.07.2023

JUDGMENT & ORDER (CAV)

[1] By the present application under Section 438 of Cr.P.C., the petitioner approached this Court for granting pre-arrest bail in connection with FIR No. 212(11)2020/PRT-PS U/S 147/148/149/326/427/353 IPC, as earlier

bail application under Section 438 Cr.P.C. was rejected by the learned Sessions Judge, Imphal East vide order dated 16.03.2021 in Cril.Misc.(AB) Case No. 13 of 2021.

[2] The brief facts of the present case is that on 30.11.2022, a rally was organized by the volunteers of YOVA Club along with local youths and Meira Paibis from Thambalkhong to Chandam Naharup in protest against the deteriorating condition of road. After the rally, YOVA Club arranged a meeting at Khergao but suddenly a police team led by NAB O.C. rushed to the spot at about 01.30 p.m. accompanied by Md. Najakat and Aziz of Khergao Makha Leikai. Without any reason, the police party checked the members present there and the police party managed to pull up 2/3 persons in their vehicles without any cause and the local Meira Paibis protested by ringing electric pole. Thereafter, the police team and accompanying two persons run away from the club. It is stated that the present petitioner did not participate in the rally and in the scuffle with the police and Meira Paibis and he was staying at his sister Ebem's house for the whole day. He did not participate in entering the house of one Najakat. The petitioner approached the Court of learned Sessions Judge, Imphal East on 12.02.2021 for granting anticipatory bail under Section 438 Cr.P.C. with interim relief and on the same day, the Court directed him to appear before the I.O. and gave him interim protection. Accordingly, he appeared before the I.O. and gave his statement that he never involved in the crime as he was staying at the residence of his sister Ebem's house for the

whole night. Before the learned Sessions Judge, Imphal East, the I.O. submitted bail objection report stating that there was some protest by women folk after ringing the electric pole, however, there was no assault or attempt to assault the police by the public on the date of occurrence. Vide order dated 16.03.2021, the learned Sessions Judge, Imphal East, rejected the bail application and vacated the interim order holding that custodial interrogation of the petitioner is necessary. It is also stated that in similar cases of other co-accused persons, anticipatory bail was allowed on 04.01.2021 by the learned Sessions Judge holding that custodial interrogation was not required. On the appearance of the co-accused in both F.I.R.s, learned Sessions Judge allowed the bail applications as custodial interrogation was not required. The petitioner also prayed for similar relief.

[3] The respondent filed objection and stated that on 30.11.2020 at about 2:30 pm when a team of Narcotic Cell, Imphal East, went to the area of Khergao Yumkhaibam, Imphal East, one suspect was running from Yumkhaibam Leirak towards School Lampak holding a suspected object and police chased him. Thereafter, police found some 7/8 youths sitting nearby and they were unable to identify the youth and disclosed their identity one by one. Suddenly, one of the youth got angry and spoke slang language and the remaining youths started to create an unruly mob by pelting stones & stumps of wood towards police personnel and against the vehicle by ringing the electric poles. The unruly mob damaged one XUV-500 and one Santro Car and

one Head Constable namely Kh. Nongpoknganba got injured on his knee. Later on, the youths vanished from the spot and mixed with the local population. An F.I.R. No. 212(11)2020 PRT-PS u/s 147/148/149/326/427/353 IPC was registered and these seven accused was named- **1.** Md. Ajman (34) yrs, S/o Md. Kayamuddin of Khergao; **2.** Md. Sher Khan (33) S/o (L) Md. Endan of Khergao Yumkhaibam A/P Sabal Leikai; **3.** Md. Jahid age (24)yrs S/o Md. Rahman of Khergao; **4.** Md. Samir (28) yrs S/o (L) Md. Eshir of Khergao Makha Leikai; **5.** Md. Akbar Khan (32) yrs S/o Md. Kayamuddin of Khergao; **6.** Md. Amiti @ Sahid Khan S/o (L) Ethoi Khergao; and **7.** Md. Eli @ Sakir S/o (L) Md. Eshir of Khergao Makha Leikai.

[4] Md. Amiti @ Sahid Khan, the petitioner herein, is the accused No. 6. The petitioner Md. Amiti Sahid Khan could not be arrested as he was granted anticipatory bail in Cril. Misc. (AB) Case No. 13 of 2021 by the learned Sessions Judge, Imphal East. As directed, he appeared before the Investigating Officer on 21.02.2021 and stated that on the date of occurrence, he was at the residence of his sister Ebem and denied participating in the meeting or commotion. However, it is submitted that the complainant named the present petitioner as one of the main accused and since the accused denied his involvement, custodial interrogation was required. Another F.I.R. Case No. 211(11) 2020 PRT PS under Section 448/427/506/34 IPC was also registered.

[5] Heard Mr. Juno Rahman, learned counsel for the petitioner; and Mr. H. Samarjit, learned PP for the State.

[6] Mr. Juno Rahman, learned counsel for the petitioner, relies upon the following case laws:-

(i) Shri Gurbaksh Singh Sibbia & ors. Vrs. State of Punjab; (1980) 2 SCC 565.

-Para 10: ... Section 438 is a procedural provision which is concerned with the personal liberty of an individual who has not been convicted of the offence in respect of which he seeks bail and who must therefore be presumed to be innocent...

-Para11:....

(1) The power under Section 438, Criminal Procedure Code, is of an extraordinary character and must be exercised sparingly in exceptional cases only;

(2) Neither Section 438 nor any other provision of the Code authorizes the grant of blanket anticipatory bail for offences not yet committed or with regard to accusations not so far levelled.

(8) Mere general allegations of mala fides in the petition are inadequate. The court must be satisfied on materials before it that the allegations of mala fides are substantial and the accusation appears to be false and groundless.

(ii) Sanjay Chandra Vrs. Central Bureau of Investigation; (2012) 1 SCC 40

-Para 40: The grant of refusal to grant bail lies within the discretion of the court. The grant of 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.

(iii) Siddharam Satlingappa Mhetre Vrs. State of Maharashtra & ors.; (2011) 1 SCC 694

-Para 89: It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided.

[7] It is seen that there are two FIRs being FIR NO. 211(11)2020 PRT P.S. and FIR No. 212(11) 2020 PRT P.S. Vide order dated 12.06.2023, learned PP was directed to submit a case diary of FIR NO. 211(11)2020 PRT P.S. and FIR No. 212(11) 2020 PRT P.S. However, the same are not submitted and the case is considered on the basis of available record. From perusal of the materials on record, it is seen that there are two FIRs and some of the accused persons are common in both FIRs. Vide Order dated 04.01.2021 in Cril. Misc. (AB) Case No. 104 of 2020, two of the accused persons were

granted anticipatory bail by the learned Sessions Judge in both FIRs on the ground that they have appeared before the I.O. and there is no need for custodial interrogation. In the present petition, interim protection was granted vide order dated 12.02.2021 in Cril.Misc(AB) Case No. 13 of 2021 in FIR No. 212 (11) 2020 PRT P.S. by the learned Sessions Judge, Imphal East and it was also recorded that he appeared before the IO but was held that custodial interrogation was required.

[8] It is the case of the petitioner that he is also entitled to the same benefit granted to the other accused. It is also stated that the offences except for Sections 326 and 353 IPC are bailable. However, there is no injury report of causing hurt by dangerous weapon, even though, there is some injury in the knee of the Head Constable.

[9] Considering all these facts, including that the petitioner has appeared before the I.O., co-accused have been granted bail on the same ground of appearance before the I.O., this Court is of the opinion that the present petitioner is also entitled to the same benefit.

[10] Accordingly, bail application is allowed. No costs.

[11] It is directed that in case of arrest of the petitioner, he shall be released on bail bond of Rs. 50,000/- with a surety of like amount to the satisfaction of the arresting authority on the condition that:

- (a) The petitioner shall furnish personal bond of Rs. 50,000/- (Rupees Fifty Thousand) with one surety of the like amount.
- (b) The petitioner shall co-operate with the investigation.
- (c) The petitioner shall not tamper with the evidence or influence witnesses.
- (d) The petitioner shall not leave Manipur without permission of Ld. Sessions Judge, Imphal East.
- (e) On breach of any of the aforesaid conditions, the respondents are entitled to take appropriate action against the petitioner in accordance with law.

[12] Send a copy of this order to learned Sessions Judge, Imphal East and OC, Porompat PS for information.

JUDGE

FR/NFR

Indrajeet