

## IN THE HIGH COURT OF MANIPUR AT IMPHAL

### **AB No. 10 of 2023**

Soibam Shyamsunder Singh, aged about 22 years, S/o Soibam Indrakumar Singh, a permanent resident of Wangjing Purna Heituppokpi, P.O. Wangjing & P.S. Thoubal, Thoubal District, Manipur- 795148.

***... Petitioner***

- Versus -

1. The Officer-in-charge, Thoubal Police Station, P.O. & P.S. Thoubal, Thoubal District, Manipur – 795138.
2. The Complainant/Informant, namely, Shri Soibam Ashokumar Singh, aged about 44 years, S/o Soibam Sudam Singh, a resident of Wangjing Purna Heituppokpi, P.O. Wangjing & P.S. Thoubal, Thoubal District, Manipur – 795148.

***... Respondents***

### **B E F O R E**

**HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA**

|                                     |   |                                                                                               |
|-------------------------------------|---|-----------------------------------------------------------------------------------------------|
| For the petitioner                  | : | Mr. S. Chitaranjan, Advocate,<br>Mr. Ch. Victor, Advocate and<br>Mr. A. Priyokumar, Advocate. |
| For the respondent                  | : | Mr. Y. Ashang, P.P.                                                                           |
| <b>Date of Hearing</b>              | : | <b>27.06.2023</b>                                                                             |
| <b>Date of Judgment &amp; Order</b> | : | <b>18.07.2023</b>                                                                             |

## **JUDGMENT & ORDER (CAV)**

**[1]** By way of the present petition under Section 438 Cr.P.C., the petitioner who is an accused in FIR No. 84(4)2023 TBL-PS U/S 326 IPC (later on, added Section 302 IPC) has approached this Court for granting anticipatory bail. His earlier application, being Cril. Misc. (AB) Case No. 48 of 2023 under Section 438 Cr.P.C was rejected by the learned Sessions Judge, Thoubal, vide order dated 16.05.2023.

**[2]** The brief facts of the present case is that the petitioner is the nephew of the informant/complainant, i.e., respondent No. 2 herein. The father of the petitioner namely Soibam Indrakumar Singh, respondent No. 2 namely, Soibam Ashokumar Singh and Soibam Jamikanta Singh are brothers and are the sons of Soibam Sudam Singh and (late) Soibam Landhoni Devi. The 3(three) brothers are living separately with their own respective family within the same locality. Both the father and mother of these 3 (three) brothers are living with respondent No. 2. There is a dispute over an agricultural land situated at Wangjing Heituppokpi, measuring about 0.27 hectare, between the 3(three) brothers and the agricultural land is jointly owned by these 3(three) brothers by recording their names in the records of rights. Respondent No. 2 sought necessary signature of the father of the petitioner namely Soibam Indrakumar Singh for the purpose of selling a piece of land to which the father of the petitioner denied and there was tussle between the father of the petitioner on one side and respondent No. 2 on the

other side. On 25.04.2023, there was a negotiation at the house of the elected Member of Wangjing Gram Panchayat and the father of the petitioner was taken to the residence of the Ward Member. The grandparent of the petitioner also came at the residence of the Ward Member. A verbal argument took place between the 3(three) brothers and as such the petitioner asked his uncles for proper demarcation by the authority concerned first and to sell out their respective portion only. Suddenly, respondent No. 2 and Soibam Jaminikanta Singh started physically assaulting the father of the petitioner and the petitioner tried to pacify them and his father escaped from the place and they were chased by the respondents and others. As such, the petitioner also got injury and was treated in Casualty Department of District Hospital, Thoubal on 26.04.2023 in the morning. The mother of the petitioner also reported the matter to the Officer-in-Charge, Thoubal Police Station on 26.04.2023 by submitting a written report but no action was taken by the police.

**[3]** After the petitioner came back from the District Hospital, Thoubal, he came to know that his grandmother sustained injury and was taken to Shija Hospital for treatment in the night of 25.04.2023. Respondent No. 2 made a written report to the Officer-in-Charge, Thoubal Police Station on 26.04.2023 alleging that the petitioner assaulted his mother namely Soibam Landhoni Devi (now deceased) by using stick and FIR No. 84(4) 2023 TBL-PS, u/s 326 IPC was registered against the petitioner. On 27.04.2023, the petitioner learnt that his grandmother namely Soibam Landhoni Devi expired at Shija Hospital and

police personnel came to his residence to arrest him on the allegation of murder. Later on, Section 302 IPC was added to the F.I.R.

**[4]** The petitioner approached the learned Sessions Judge, Thoubal, under Section 438 Cr.P.C, being Cril. Misc. (AB) No. 48 of 2023 and vide order dated 02.05.2023 interim anticipatory bail was granted to the petitioner with the conditions that: "*(i) the petitioner shall co-operate with the investigation; (ii) the petitioner shall make themselves available before the investigating authority not later than 13.05.2023; (iii) the petitioner shall not influence prosecution witnesses; and (iv) the petitioner shall not leave the State of Manipur without prior permission of the Court.*" However, vide order dated 16.05.2023, the bail application under Section 438 Cr.P.C was rejected solely on the ground that he did not appear before the I.O. and as such violated the conditions imposed by the learned Sessions Judge and the bail application was rejected and interim order was vacated. The relevant portion of the order read as follows: "*Perused the AB report of the I.O. of the case. Allegations against the accused is of sec: 326 and 302 IPC. The I.O. of the case has submitted that the petitioner had not appeared before him for giving his statement and as such had violated this Court's direction to appear before the I.O. not later than 13.05.2023.*"

**[5]** After this, the petitioner approached this Court under Section 438 Cr.P.C. inter alia on the ground that:

- (i) the petitioner could not appeared before the Investigating Officer as there was tension in the family on account of the death of his own grandmother and due to religious rites and functions of the death;
- (ii) the learned Sessions Judge rejected the bail application only on the ground that allegation of offences punishable under Section 326 & 302 IPC have been invoked and the failure of the petitioner before the I.O.;
- (iii) the cause of death as per Medical Death Summary issued by Shija Hospital is cardiac arrest and the manner of death is accidental and hence charge under Section 302 IPC is not attracted in the present case;
- (iv) the petitioner has no criminal antecedents and is not involved in any other offence; and
- (v) the petitioner is a regular student studying in 5<sup>th</sup> Semester of Bachelor of Arts in Yangambam Kumar College, Wangjing, and if arrested, his study would be jeopardized.

**[6]** It is also undertaken that the petitioner will furnish sufficient bond(s) and would appear before the I.O. whenever required; would not abscond or leave without the permission of the Court; would not directly or indirectly influence any person acquainted with the present case; and will comply all the conditions imposed by this Court.

**[7]** State filed counter affidavit and stated that in the course of examination of eye witnesses, the presence of the petitioner at the crime scene is established. The learned Sessions Judge has rightly rejected the bail application as the petitioner did not comply with the conditions imposed by the Court and did not cooperate with the investigation. Regarding the Death Summary issued by Shija Hospital, it is stated that cardiac arrest is due to severe head injury suffered by the deceased from blunt object.

**[8]** Respondent No. 2/complainant also filed counter affidavit stating that the deceased sustained severe head injury due to assault by the petitioner by using stick and the deceased has no history of chronic illness and the death was due to severe head injury suffered by the deceased. The learned Sessions Judge, Thoubal, rightly rejected the bail application as the petitioner failed to comply the conditions imposed by the Court.

**[9]** Heard learned counsel for the parties. Perused the materials on record and case law cited at the bar.

**[10]** Mr. S. Chitaranjan, learned counsel for the petitioner, submits that on mere perusal of the Death Summary, manner of death is accidental and cardiac arrest. He draws the attention of this Court that the cause of death is not due to head injury and as such there is no materials to invoke provisions of Section 302 IPC against the petitioner and if averment of the complainant is presumed to be true, at most, Section 304 A IPC i.e. causing death by

negligence would be attracted and the same is a bailable offence. Regarding Section 326 IPC for causing voluntary grievous hurt by dangerous weapon, it is submitted that stick cannot be considered as a dangerous weapon and that nature of stick is also not clearly stated by the prosecution nor the complainant. With regard to the failure of the petitioner to appear before the I.O as directed by the learned Sessions Judge, Thoubal, it is submitted that curfew was imposed throughout the many districts of Manipur including Thoubal district due to the present law and order situation arisen on 03.05.2023 and that time also high tension between the families and due to death and religious rites and functions in the family for the demise of his grandmother, the petitioner could not appear before the Investigating Officer for recording his statement. It is further submitted that the non-appearance of the petitioner before the I.O. as directed by the learned Sessions Judge, Thoubal, is not deliberate and intentional and the same is due to the situation stated herein. Moreover, the petitioner is a student pursuing bachelor course and if he is taken into custody, his study will be jeopardized and he has no previous involvement in any criminal activities. It is further submitted that rejection of the bail application on failure to appear before the I.O. in absence of any allegation of tempering the evidence or threatening the witnesses is not justifiable. It is prayed that bail application may be allowed. Mr. Ch. Victor, learned counsel representing the petitioner has also highlighted that Section 438 Cr.P.C embodies the concept of personal liberty and has stated that the

Court may take judicial note of situation prevailing during the period starting wef 4<sup>th</sup> May, 2023, where curfew was imposed in most districts of Manipur.

**[11]** Learned counsel for the petitioner relies upon the following judgment:

(i) **State of M.P. vs. Pradeep Sharma;** [indiankanoon.org/doc/176600070/](https://indiankanoon.org/doc/176600070/) to the point that an order under Section 438 is a device to secure the individual's liberty, it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations likely or unlikely.

(ii) **M.R. Narayan vs. State; CrilJ 1472, 2003 (66) DRJ 48 (Delhi High Court)** to the point that unreasonable conditions which amounts to refusal of the bail application should not be imposed while granting bail under Section 438 Cr.P.C.

(iii) **Khajim @ Khajimulla Khan Vrs. The State of Karnataka;** [indiankanoon.org/doc/155371923/](https://indiankanoon.org/doc/155371923/) to the point that it is the duty of the Court to satisfy itself on the basis of the material placed on record that the breach of any conditions of bail goes to the root of the trial in question and it is also well settled proposition of law that once the bail is granted it should not be cancelled in a mechanical manner without considering any circumstances have rendered it no longer conducive to a fair trial

to allow the accused the benefit of freedom of enjoying the concession of bail during the trial.

**[12]** It is highlighted that mere failure to appear before the Investigating Officer as directed by the learned Sessions Judge, Thoubal and in absence of any allegations of interfering in the investigation will not warrant cancellation of the interim bail already granted.

**[13]** Mr. Y. Ashang, learned PP for the State, submits that the investigation is at initial stage and learned Sessions Judge, Thoubal, was right in cancelling the bail application as the petitioner did not appear before the Investigating Officer as directed and as well as it is a proof that he is not cooperating with the investigation. No proper explanation is given in the bail application for failure to appear before the I.O. In the course of investigation, many eye witnesses gave their statements that the petitioner assaulted the deceased. The Death Summary Report issued by Shija Hospital (Annexure-A/6) cannot be a conclusive evidence to establish the cause of death and as such the petitioner cannot take advantage of the same and the cause of death will be established during the course of trial on the basis of expert opinion. Till date also, the petitioner is not appearing before the I.O. as directed and crime weapon is yet to be seized. Learned PP relies on the judgment of Hon'ble Supreme Court reported in **(2014) 13 SCC 579** to the effect that recovery of the crime weapon is to be made and accordingly anticipatory bail was rejected.

**[14]** Mr. Th. Mahira, learned counsel assisted by Mr. Vijaykumar, learned counsel for respondent No. 2/complainant, submits that the presence of the petitioner at the crime scene has been established from the eye witnesses. The charge under Section 302 IPC was added as the deceased died due to head injury inflicted by the petitioner. The reasons for failure to appear before the I.O. due to curfew and mob violence as submitted during the hearing is not mentioned in the bail application. The cause of death accidental as mentioned in Death Summary issued by the Shija Hospital (Annexure-A/6) is not conclusive and the same has to be ascertained during the course of the trial. It is submitted that the bail application be rejected.

**[15]** Considered the submissions made by the counsel for the parties at the bar, perused the materials on record and the case laws cited. Question involved in the present case is whether failure to appear before the Investigating Officer as directed by the learned Session Judge is sufficient to reject the bail application and reject the interim anticipatory bail granted already.

**[16]** It is seen from the pleadings of the parties and documents on record that there is a property dispute between the three brothers and on the day of the occurrence there was a negotiation between the brothers at the residence of the Ward Member. In a sudden altercation between brothers, injuries were suffered specially by the deceased and the petitioner. The injury to the deceased was allegedly inflicted by stick blow. The deceased succumbed

to her injuries and the 'Death Summary' issued by SHIJA Hospital is not conclusive. The real cause of death is to be ascertained during the trial and the materials on record do not indicate that the cause of death was due to head injury. From the available record, it is apparent that the injury was sustained in a sudden fight and was not pre-mediated. The petitioner was on interim bail and his bail application was rejected on the ground that he did not appear before the IO as directed by the learned Sessions Judge, Thoubal and Section 302 IPC was invoked. Apparently, the petitioner has no previous criminal record and is a student pursuing graduation. Even though, the petitioner did not mention the curfew and mob violence as reason for non-appearance before the IO in his application, this Court can take judicial note of this well-known event.

**[17]** This Court is of the view that rejection of the bail application solely on ground of non-appearance before the IO will not be proper, when the petitioner is a young student and the injury was caused in sudden fight between brothers while negotiating in a property dispute. The petitioner also sustained injury in the fight. Real cause of death will be established during the trial.

**[18]** In the circumstances, the bail application is allowed. In case of arrest, the petitioner shall be released on furnishing a bail bond of Rs.50,000/- with a surety of like amount to the satisfaction of the arresting authority subject to the following conditions that:

- (a) The petitioner shall co-operate with the investigation and shall appear before the IO on 1<sup>st</sup> and 15<sup>th</sup> of every month (till October, 2023) and on such dates as directed by the IO;
- (b) The petitioner shall not tamper with any evidence in connection with the present FIR and shall not influence any person acquainted with the present case;
- (c) The petitioner shall not leave the State of Manipur without the permission of learned Sessions Judge, Thoubal; and
- (d) The respondents may approach this Court for cancellation of bail, if the petitioner fails to comply any of the conditions as mentioned above.

**[19]** With these observations and directions the bail application is disposed of. Send a copy of this order to the learned Sessions Judge, Thoubal and the OC, Thoubal PS for information. It is clarified that this Court does not express any opinion on the merit of the case and anything stated herein shall be confined to disposing the bail application.

**JUDGE**

**FR/NFR**

*Indrajeet*