

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

CRIL. PETITION NO. 51 OF 2023

T. Thangzalam Haokip @ T.T. Haokip, aged about 71
years, S/o Late T. Thongzachin Haokip, resident of S.
Kotlien Village, Churachandpur, Manipur

....
Petitioner

- Versus -

The Officer in Charge, Porompat Police Station,
Imphal East, Manipur – 795005.

.... Respondent

B E F O R E
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU

For the petitioner	:	Mr. D. Julius Riamei, Advocate
For the respondent	:	Mr. M. Rarry, Special PP
Date of hearing	:	14.12.2023
Date of order	:	15.12.2023

O R D E R

[1] Heard Mr. D. Julius Riamei, learned counsel appearing for the petitioner and Mr. M. Rarry, learned Special PP appearing for the respondent.

[2] The present Criminal Petition has been filed praying for quashing of order dated 20.11.2023 passed in Cril. Misc. Case No. 204 of 2023 by the Ld. Chief Judicial Magistrate, Imphal East.

The prayer of the petition reads as follows:

"(i) Quash or set aside order dated 20.11.2023 passed in Cril. Misc. Case No. 204 of 2023 by the Ld. Chief Judicial Magistrate, Imphal East and allow the petitioner to go to Melbourne (Australia) for medical treatment with Prof. Chirstopher McCormack @ Prof. Chris McCormark w.e.f 7th December, 2023 to 20th January, 2024.

(ii) Pass any other appropriate order/orders that this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

[3] The grounds for filing the present petition are as follows :

A) Because, the Ld. Chief Judicial Magistrate, Imphal East had passed the Order dated 20.11.2023, without application of its judicious mind or that the aforesaid order in question had been passed in contrary to the law as laid down by the Hon'ble Supreme Court of India.

B) Because, the impugned order dated 20.11.2023 passed by the Ld. Chief Judicial Magistrate, Imphal East is not sustainable in the eye of law, since it violates Article 21 of the Constitution of India. Article 21 of the Constitution of India, ensures the life and liberty of every individual, Citizens or Non-Citizens. The concept of personal liberty includes right to health as well.

C) Because, the Ld. Chief Judicial Magistrate, Imphal East, has greatly erred in ignoring the fact that, everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care. It is pertinent to mention herein that as per Article 47 of the Indian Constitution, it lays pressure on the improvement of general health. In the present case, the Petitioner is suffering from Kaposi Sarcoma, which is a life threatening disease, if not treated at a particular time and not treated with the right physician.

D) Because, the Petitioner Kaposi Sarcoma (a disease in which cancer cells as found in the skin or mucous membranes) on the right leg and is spreading day by day, if at all the Petitioner is not treated for the aforesaid ailment at this point of juncture, the same will cause danger/risk to the life of the Petitioner.

E) Because, if the Petitioner does not avail the appointment given by Prof. Chris McCormack for treatment for 20.12.2023 getting further appointment with him will be very difficult and in addition the ailment/cancer (such as boils and lesions have been formed in both the toes) of the Petitioner will aggravate and there is high risk of losing his life, if at all the Petitioner is not treated for the aforesaid ailment urgently,

F) Because, the Petitioner is ready abide by any conditions laid down by the Hon'ble Court. Further, it is submitted that the Petitioner is a former Deputy Speaker of Manipur Legislative Speaker and a former Chairman of Hill Areas Committee, Manipur Legislative Assembly and as such the Petitioner shall not abscond as in doing so the Petitioner reputation in his Community would be impaired and in addition the Petitioner to contest in Political Election would pitfall.

G) Because, the Impugned order dated 20.11.2023 passed by the Ld. Chief Judicial Magistrate, Imphal East restricting the Petitioner to travel aboard for medical treatment is prejudicial to the health of the Petitioner and is against the fundamental principles of Article 21 of the Constitution of India.

*H) Because, the Ld. Chief Judicial Magistrate, Imphal East, while passing the impugned order dated 20.11.2023 had not appreciated the documents/medical records filed by the Petitioner. That in Para No. 6 of the impugned order, the Ld. Chief Judicial Magistrate, Imphal East had comes to the conclusion that the report dated 23.01.2023 (**Annexure-P/9**) from Melbourne Pathology linked by Dr. Christopher Cormack, has no evident of Kaposi Sarcoma. It is submitted that the Ld. Chief Judicial Magistrate, Imphal East had totally ignored that the aforesaid report dated 23.01.2023 that the report in question pertains to clinical notes of Left Arm, Abdomen, Left thigh and left foot of the Petitioner. The letter dated 23.01.2023 written by Prof. Christopher McCormack to Dr. Mitchell Chipman (**Annexure-P/8**) as well as Final Histopathology report dated 27.06.2023 (**Annexure- P/5**) clearly stated that the Petitioner is suffering from Kaposi's Sarcoma on his right second toe.*

I) Because, the Ld. Chief Judicial Magistrate, Imphal East had greatly erred in coming to the conclusion that there are chances that the Petitioner will abscond. It is submitted that the Petitioner is having a family of his own and in addition to that, the Petitioner is a former Deputy Speaker of Manipur Legislative Assembly and a former Chairman of Hill Areas Committee, therefore there is no question, that the Petitioner

will abscond, while leaving the Country for treatment purpose and tarnish his own image/reputation.

J) Because, the Ld. Chief Judicial Magistrate, Imphal East have not considered the severity of the ailment/medical condition of the Petitioner while passing the impugned order dated 20.11.2023. It is submitted that, since the Petitioner is suffering from Kaposi's Sarcoma, the Ld. Chief Judicial Magistrate, Imphal East ought to have allowed the Petitioner to avail medical treatment from Prof. Christopher McCormack @ Chris McCormack.

K) Because, the Ld. Chief Judicial Magistrate, Imphal East had greatly erred in ignoring the fact that the prayer as sought by the Petitioner was for availing treatment pertaining to Kaposi's Sarcoma, which the Petitioner was diagnosed since the year, 2022. Getting medical treatment/medical aid at this juncture is very crucial one, since the delay in availing the same will have a bad impact on the health condition of the Petitioner, which cannot be compensated in monetary terms.

L) Because, the granting of leave/permission to travel to Melbourne (Australia) to avail medical treatment by the Petitioner will not delay the legal process or that the Petitioner is willing to comply all the conditions imposed by the Hon'ble Court, if at all, the Petitioner is allowed to avail medical treatment from Prof. Christopher McCormack @ Chris McCormack, Melbourne (Australia).

For the reason stated above, in the facts and circumstances of the case, the Petitioner may be allowed to raise additional grounds at the hearing of the matter before the Hon'ble Court.

The Petitioner has not filed any other similar Petition in any other High Court or in the Supreme Court of India on the issue in this Criminal Petition.

The cause of action for filing this Petition arises within the jurisdiction of this Hon'ble Court and the same is still continuing."

[4] The learned counsel for the petitioner clearly submits that the learned Chief Judicial Magistrate, Imphal East had not appreciated the documents/medical records filed by the petitioner and comes to the conclusion that the report dated 23.01.2023 **(Annexure-P/9)** from

Melbourne Pathology linked by Dr. Christopher Cormack, has no evident of Kaposi Sarcoma. He, further, submits that the learned Chief Judicial Magistrate, Imphal East had totally ignored the aforesaid report dated 23.01.2023 that the report in question pertains to clinical notes of Left Arm, Abdomen, Left thigh and left foot of the petitioner. The letter dated 23.01.2023 written by Prof. Christopher McCormack to Dr. Mitchell Chipman (**Annexure-P/8**) as well as Final Histopathology report dated 27.06.2023 (**Annexure- P/5**) clearly stated that the Petitioner is suffering from Kaposi's Sarcoma on his right second toe.

[5] The learned PP appearing for the respondent has filed objection to the present petition as thus:

"3. That the brief fact of the case is that on 22.05.2023 at 10:20 am received an information on the same day at about 10:00 am that some armed youth numbering around 3/ 4 male (Kuki) under the instigation of one T. Thangzalam Haokip @ T.T. Haokip (the petitioner) aged about 71 years old S/o. (L) T. Thongzachin Haokip of S. Kotlien Village, Churhandpur (Ex-MLA Henglep AC) A/p, New Lambulance, Imphal East, turned up at New Checkon Tribal market, Imphal East and broke the peace and tranquility of the area by threatening the vendors from other ethnic groups to vacate the place immediately. Moreover, they had also intimidated women vendors and shopkeepers around to shut down the shops and vendors. As a result of which women vendors of different ethnic groups got agitated and huge mobs out of anger tried to storm into New Lambulance area. Moreover, they had also used abusive and hateful words to the womenfolk vendors from different communities at Tribal Market Checkon. As a result, peace was broken and tension built up unnecessarily due to the provocation.

So, a Suo moto case under FIR No. 385(05) 2023 PRT-PS U/s, 295-A/298/506/34 IPC and 25(1-b) Arms Act is registered against the miscreants for investigation. Hence the case and investigated into.

4. That during the course of investigation, the complainant was examined and he fully corroborated with the OE of the case. Visited the place of occurrence and inspected minutely and drawn a rough sketch map of the PO with proper index. The accused persons were preliminary interrogated. On interrogation, they admitted to have committed the offences

charged against them. Two nos. of SBBL (single barrel gun) were seized from them i.e. one from Mr. Vicky Mangoulam Singson and one from Johnlalkhopao Gangte.

On further investigation, the accused persons were thoroughly interrogated. On interrogation, the arrested accused persons namely Johnlalkhopao Gangte and Viky Mangoulam Singson of New Lambulance, 2nd street disclosed that Mr. T.T. Haokip @ T. Thangzalam Haokip (71 yrs) S/o (L) T. Thongzachin of Churachandpur, S. Kotlien Village directed them to threaten the womenfolk's vendors sitting at Tribal Market to close their shops at Tribal Market and to give stern warning as the situation is still hot amongst the two communities. Later Mr. Vicky and Mr. Johnlalkhopao came out from their residence of New Lambulane 2nd Street holding guns and threatened the sitting womenfolk vendors from different ethnic groups who were selling vegetables and other items at Tribal Market to shut down the shops and vendors. Suddenly the vendors sitting womenfolk confronted and argued with Mr. Vicky and Mr. Johnlalkhopao for breaking the peace and tranquility of the said area as they were threatening the vendors from other ethnic groups who were sitting in the market. All got agitated and huge mob gathered out of anger. Later the huge mob tried to storm into New Lambulance and Tribal Market area and a high tension erupted in the said areas.

5. That on further course of investigation, a police team conducted house search at the said area i.e. Tribal Market and New Lambulane, 2nd street and during house search the following seizures were made:

- (i) Pistol bearing no. H37111Y CAT 5802 PIETRO BERETTA and*
- (ii) Pistol Carl Walther Waffenfabrik Model PPK Cal 7.655 mm bearing no. 814724*
- (iii) one single barrel short gun bearing no 10165 BE 1997 SUJATA ARMS MFG. Co Made in India.*
- (iv) Two different types of live ammunitions (i.e. 7 live round and 5 live round)*

The above were seized from the residence of Mr. T.T. Haokip. One Mr. Lenzakhup Haokip (44) yrs. S/o, Thangzalam Haokip @ T.T. Haokip of New Lambulance, 2nd street along with 3(three) gun licenses. In the course of investigation, the 4(four) arrested accused persons were remanded into Judicial Custody by the Hon'ble CJM/IE.

Hence, based on the above fact and circumstances a Prima facie evidence U/s 295A/298/506/34 IPC & 25(1-b) Arms, Act r/w 153-A IPC is well established against the said arrested accused persons. Investigation is complete and Charge Sheet against the accused persons has been submitted.

6. That after granting him bail the accused has been allowed to appear before the Ld. Chief Judicial Magistrate, Churachandpur instead of Imphal considering the present situation in Manipur.

7. That even though the petitioner claims himself to an Ex-MLA his conduct and behavior during these crucial times are and unbecoming of a public leader as he was promoting enmity between classes of people residing in the State of Manipur. Charge Sheet has been filed against him and his request to go abroad at this juncture could be only to abscond to avoid trial. From a perusal of the Medical documents annexed with the petition, it is found that his medical conditions are not an emergency or life threatening. Besides there are more than one hundred Hospitals listed in India that can treat Kaposi Sarcoma and anyone can find them on the internet just by the click of a mouse. Some of the top Hospitals include –

- (1) Medanta – The Medicity, Gurgaon
- (2) Kokilaben Dhirubhai Ambani, Hospital Mumbai
- (3) BLK Super Speciality Hospital, New Delhi
- (4) Dharamshila Narayana Superspeciality Hospital, New Delhi
- (5) Fortis Memorial Research Institute, Gurgaon
- (6) Appollo Hospitals, Greams Road Chennai
- (7) Artemis Hospital, Gurgaon
- (8) Indraprastha Apollo Hospital, New Delhi
- (9) Gleneagles Global Hospital, Chennai
- (10) Apollo Gleaneagles Hospital, Kolkata

If at all necessary the accused can receive treatment at any Hospital within the Country as India has one of the World's best Doctors and Hospitals. The accused is seeking appointment with the Australian Doctor without any reference from any Medical Authority but just at his whim and pleasure. His prayers should be rejected. The impugned order passed by the Ld. Court below deserves to interference. The right to freedom of movement guaranteed to every citizen of the country are always subject to reasonable restrictions."

[6] During the course of hearing, the learned Special PP stated that if at all the petitioner desired to get treatment for Kaposi Sarcoma outside State, there are lots of top Hospital in the Country, he does not need to travel/go to Melbourne (Australia) for advance medical treatment of Kaposi Sarcoma.

[7] Further, the learned Special PP stated that charge sheet has already been filed before the learned Chief Judicial Magistrate, Imphal East Court. But, the learned counsel for the petitioner submits that he is not informed and aware about it.

[8] On combine perusal of Final Histopathology Report **(Annexure-P/5)**, letter dated 23.01.2023 written by Prof. Christopher McCormack to Dr. Mitchell Chipman **(Annexure -P/8)** & report dated 23.01.2023 from Melbourne Pathology linked by Dr. Christopher Cormack **(Annexure -P/9)** does not clearly indicate/link that the petitioner is suffering from Kaposi Sarcoma.

[9] On perusal of the order dated 20.11.2023 passed in Cril. Misc. Case No. 204 of 2023, the learned CJM/Imphal East rejected the petitioner's application filed u/s 205 Cr.P.C. read with Section 317 Cr.P.C seeking leave of the Court to allow the petitioner/accused to travel abroad for advance medical treatment from 7.12.2023 till 20.01.2024.

[10] Ground for rejection of the petitioner's application by the learned Chief Judicial Magistrate, Imphal East and the same is reproduced as:

"6. It is noted from page no. 17 of the petition, the medical report of the petitioner dated 23.01.2023 from Melbourne Pathology linked by Dr. Christopher Cormack, Kaposi's Sarcoma was not evident. Hence, the claim of the petitioner that he is suffering from Kaposi's Sarcoma is untrustworthy. In addition, there are chances of the petitioner absconding".

[11] In view of the facts and circumstances and after combine reading of Final Histopathology Report **(Annexure-P/5)**, letter dated 23.01.2023 written by Prof. Christopher McCormack to Dr. Mitchell Chipman **(Annexure -P/8)** & report dated 23.01.2023 from Melbourne Pathology linked by Dr. Christopher Cormack **(Annexure -P/9)**, the impugned order dated 20.11.2023 passed in Cril. Misc. Case

No. 20 4 of 2023 by the learned Chief Judicial Magistrate, Imphal East Court does not call for interference to the claim of the petitioner that he is suffering from Kaposi's Sarcoma is not found in the above mentioned **(Annexures-P/5, P/8 & P/9)**.

[12] Accordingly, the present Cril. Petition No. 51 of 2023 is dismissed, however, the petitioner is given liberty to file application seeking leave to allow the petitioner/accused to travel abroad for advance medical treatment with additional documents/new facts, if any, before the learned Chief Judicial Magistrate, Imphal East.

JUDGE

Thoiba

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