

HIGH COURT OF TRIPURA

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A.B.No.22 of 2023

For Petitioner(s) : Mr. S. Lodh, Advocate.

For Respondent(s) : Mr. S. Debnath, Addl. P.P.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

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11/09/2023

Heard Mr. S. Lodh, learned counsel appearing for the petitioner. Also heard Mr. S. Debnath, learned Addl. Public Prosecutor appearing for the respondent-State.

[2] This is an application filed under Section-438 of Cr. P.C. for granting anticipatory bail to the accused-person who is wanted in connection with West Agartala P.S. crime No.2023WAG122 registered under Sections-341, 506 and 34 of the IPC & Section-25 of the Arms Act.

[3] The facts in brief are that, in the last election of TCA, which was held on 21.10.2022, the panel of the informant lost in all posts except the post of President. After losing the election, the informant and his other associates started mischievous activities against the present body of TCA by alleging false and concocted stories and tried to create chaos in various ways. As they lost the election, the informant and his other associates tried to harass the applicant and his associates in various ways, and lastly, the informant lodged this false case against the applicant being West Agartala PS Case No. 2023 WAG 122, dated 23.07.2023, registered under sections 341,506 and 34 of the Indian Penal Code & Section 25 of Arms Act.

[4] Apprehending arrest in connection with the instant case, the applicant filed one present application before this Court, and the same was registered and marked as AB 17/2023, and vide order dated 10.08.2023, the same was rejected. The wife of the applicant fell ill, and for better treatment, she is required to be taken outside the State and presence of the applicant is urgently required hence, the applicant has filed the present pre-arrest bail application.

[5] Mr. S. Lodh, learned counsel appearing for the accused-petitioner has submitted that the applicant is an elected Councilor of Apex Council of Tripura Cricket Association (TCA for short) for the Session 2022-25. The result of the election was declared by the Electoral Officer of TCA vide Memo dated

21.10.2022. It is further stated that till date neither he resigned from the post of Councilor of Apex Council of TCA nor he has been declared as disqualified for holding the post of Councilor of TCA.

[6] In the last election of TCA, which was held on 21.10.2022, there were two panels, and the panel of the informant lost in all posts except the post of President and the informant contested the election for the post of Secretary. After losing the election, the informant and his other associates started mischievous activities against the present body of TCA by alleging false and concocted stories and also tried to create chaos in various ways. As they lost the election, the informant and his other associates tried to harass the applicant and his associates in various ways, and lastly, the informant lodged this false case against the applicant with some mala fide intention.

[7] The Registrar of Societies, Government of Tripura, received a complaint from Sri Prasanta Roy, Ex-Cricketer, whereby Sri Roy, alleged that as Sri Tapan Lodh, selected as nominated Councilor of Agartala Municipal Corporation, he is dis-qualified to hold the chair of President of TCA, and on receipt of the same, the Registrar of Societies, vide its letter dated 15.06.2023 sought for clarification on the alleged matter, and on receipt of the same, the TCA decided to sit in an emergent meeting of Apex Council in terms of Clause 15(7) of the Memorandum & Rules of Tripura Cricket Association (here-in- after called as the TCA Rules"), and accordingly, the honorary Secretary of TCA vide notice dated 15.07.2023 fixed the meeting on 19.07.2023 at 11:00 am in the Conference Hall of Head Office of TCA. On 19.07.2023 some miscreants under the instigation of Sri Tapan Lodh and the informant of the instant case and others blocked the gate of Head Office of the TCA and did not allow the Apex Council members and the office staffs of TCA to enter into the Head Office of TCA and while the applicant and other Apex Council members tried to enter into the TCA Head Office, they threatened them with dire consequences.

[8] It has been further submitted that on 21.07.2023, the Officer-in-Charge of West Agartala PS vide his letter dated 21.07.2023 gave a requisition so the Sub Divisional Magistrate, Sadar alleging that Sri Jayanta Dey, Joint Secretary of TCA, Sri Tapan Lodh and others approached him and wanted assistance for opening the TCA office. They told the Officer-in-Charge that the Secretary

illegally affixed an office order stating that TCA office should remain closed and took the keys of the office. For opening the TCA office, he requested the SDM, Sadar for deputing an Executive Magistrate, and in furtherance thereof, the DCM, Sadar came there and the locks of the TCA office were broken and thereafter said Tapan Lodh claiming himself as President, TCA, took possession of office chambers of President and Joint Secretary, and by a written note dated 21.07.2023 he acknowledged the same which was also confirmed by the DCM, Sadar.

[9] It may be mentioned herein that neither the Officer-in- Charge, West Agartala PS nor the SDM, Sadar, have jurisdiction to break the keys of TCA office and hand over the office chambers to said Tapan Lodh and others. It is further stated that the Officer-in-Charge, West Agartala PS, and the SDM, Sadar did not take any step to protect the property of TCA rather they most illegally broke the keys of the TCA office and handed over the same to some unauthorized persons. It is further stated that Jayanta Dey, Joint Secretary of TCA was present in the meeting of the Apex Council.

[10] TCA alongwith the Vice-President of TCA and other Apex Council members including the applicant went to TCA Head office and while they were entering into TCA office premise, some anti-social elements being abated by Sri Tapan Lodh, Sri Jayanta Dey and others, prevented the applicant and others from entering into the Head Office of TCA, and lastly, they were assaulted by those anti-socials. It may be mentioned herein that prior to going to TCA office, they first approached the Officer- in-Charge of West Agartala PS for providing security, and in furtherance thereof, the Officer-in-Charge deployed some police personnel along with them for entering into the TCA office, but in-front of the police personnel, they were assaulted and abused with filthy languages, but police did not take any action. Thereafter, the Secretary of TCA lodged a written complaint on 22.07.2023 before the Officer-in-Charge of West Agartala PS narrating the entire incident, and on receipt of the same, police registered a case vide West Agartala P.S. Case No.2023WAG 0120, dated 22.07.2023 under Sections-341,325,506 and 34 of IPC.

[11] Per contra, learned Public Prosecutor, appearing for the State-respondent contended that the petitioner is already a habitual offender and admittedly, there are several criminal cases pending against him at the Court of

learned Judicial Magistrate 1st Class Belonia. He informed that prosecution has taken step for cancellation of the bail application since he is on bail in the pretext of the medical treatment in one case. Learned P.P. also submitted before this Court that the case of the petitioner would fall under Section-25(1-A) of the Arms Act in violation of Section-7.

[12] He further contended that the arguments made by the petitioner with regard to complaint and counter complaint are incorrect and thus, he prayed to dismiss the bail application as the same is not maintainable. Further the petitioner has not approached the Court below before approaching this Court. The petitioner has approached this Court straightway and no special reasons have been indicated in the pleadings as to why he has not approached the Sessions Court before approaching the High Court.

[13] In view of above and after overall discussion, this Court is of the opinion that for final conclusion, it would be apposite to discuss the chronology of the present case. Previously, the petition has approached before this Court for granting pre-arrest bail and the Court after hearing learned counsel appearing for the parties and having gone through the material evidence on record, vide order dated 10.08.2023 has order as under:

“This present application has been filed under Section 438 of the Code of Criminal Procedure seeking pre-arrest bail against the FIR No. Crime No.2023 WAG 122 which is registered against the petitioner herein under Section 341, 506 and 34 of the IPC & Section 25 of Arms Act. On the strength of the said complaint dated 23.07.2023, it is indicating that the petitioner Sri Manik Lal Das with the support of a firearms has threatened the complainant. Hence the case against the petitioner as mentioned here-in-above.

[2] Heard Mr. S. Lodh, learned counsel assisted by Mr. K. Roy, learned counsel appearing for the petitioner. Also heard Mr. Ratan Datta, learned PP assisted by Mr. S. Debnath, learned Addl. PP representing the State-respondent.

[3] Mr. S. Lodh, learned counsel appearing for the accused-petitioner herein submits before this Court that his case under Section 438 of the Cr.P.C. needs to be considered as the complaint filed against the petitioner herein is only an afterthought and a counterblast complaint. Since a person supporting the accused-petitioner herein has filed a complaint on 22.07.2023, the present compliant has been filed as a counterblast compliant. Further on legal position, learned counsel indicated that the case of the petitioner falls for violation of Section 3 of the Arms Act and under Sub-Section 25(1-B)(a) and as such, his case may be considered for granting bail since the punishment would be up to 3 years.

[4] He further relied on Para-63 of the latest judgment of the Hon'ble Supreme Court reported in AIR 2022 SC 3386 titled as Satendra Kumar Antil Vs. Central Bureau of Investigation and anr., which is reproduced here-in-under:-

“63. We have already dealt with the relevant provisions which would take care of categories A and B. At the cost of repetition, we wish to state that, in category A, one would expect a better exercise of discretion on the part of the court in favour of the accused. Coming to category B, these cases will have to be dealt with on a case-to-case basis again keeping in view the general principle of law and the provisions, as discussed by us.”

[5] Learned counsel relying upon para-63 of the Satender Kumar Antil (supra) submitted that his case falls under Category A of cases and prayed before this Court to grant the present anticipatory bail application.

[6] Per contra, learned Public Prosecutor, appearing for the State-respondent contended that the petitioner is already a habitual offender and admittedly, there are several criminal cases pending against him at the Court of learned Judicial Magistrate 1st Class Belonia. He informed that prosecution has taken step for cancellation of the bail application since he is on bail in the pretext of the medical treatment in one case. Learned P.P. also submitted before this Court that the case of the petitioner would fall under Section-25(1-A) of the Arms Act in violation of Section-7. He further contended that the arguments made by the petitioner with regard to complaint and counter complaint are incorrect and thus, he prayed to dismiss the bail application as the same is not maintainable. Further the petitioner has not approached the Court below before approaching this Court. The petitioner has approached this Court straightway and no special reasons have been indicated in the pleadings as to why he has not approached the Sessions Court before approaching the High Court and in this regard, learned PP has also placed his reliance in a judgment of the Allahabad High Court in Harendra Singh @ Harendra Bahadur Vs The State of UP in Criminal Misc. Application No.6478 of 2019 (Bail) wherein it has been held thus:

16. In a decision reported in 1983(2) KLJ 8 in the case of K.C. Iyya Vs. State of Karnataka, the High Court of Karnataka has observed

“7. Since both the Courts, the Court of Sessions and this Court have concurrent powers in the matter, it appears desirable, for more than one reason, that the Sessions Court should be approached first in the matter.”

17. In the case of Shivasubramanyam Vs. State of Karnataka and another; 2002 CRL.LJ 1998, the Karnataka High Court re-iterated the abovesaid principles and ultimately held that the application filed under Section 438 of Cr.P.C. directly to the High Court is maintainable only under exceptional and under special circumstances, but not as a routine and the party cannot come before the Court as a matter of right.

18. By looking into the abovesaid discussions. I am of the opinion that the party has to approach the Sessions Court first and then he has to approach the High Court which is the normal course. But the courts have also observed that in extraordinary circumstances with special reasons, the party can also approach the High Court. The High Court cannot entertain Section 438 of

Cr.P.C. as a matter of routine without examining whether there are any special reasons or special circumstances to entertain the said application.

19. In the case of Sri Kwmta Gwra Brahma Vs. State of Assam (Bail No.3024 of 2014), The Gauhati High Court has also expressed similar view and held that the party has to approach the Court of Sessions first under Section 438 of Cr.P.C. and he can later approach the High Court.

20. The intention of bringing out Section 438 of Cr.P.C. is enabling each and every person in the country if under extraordinary circumstances under exigencies either to approach the Court of Sessions or the High Court which can be concurrently exercised by both the courts. Though such remedy, cannot be riddled down by imposing any extraordinary condition but still the Court can refuse to entertain the bail petition and direct the party to approach the Court of Sessions first because Section 438 of Cr.P.C. shall not be exercised as a matter of right by the party, though it can be invoked either before the Sessions Court or before the High Court. It is purely the discretionary power of the Court to exercise power depending upon the facts and circumstances of each case. Therefore, the High Court can direct the party to go first before the Court of Sessions and then come to the High Court though there is no embargo under the statute itself, but the Court can do so on the basis of various factors.

21. It is worth to note here that whenever the concurrent jurisdiction is vested under the statute simultaneously in two courts of one is superior to the other, then it is appropriate that the party should apply to the subordinate Court first, because the higher Court would have the advantage of considering the opinion of the Sessions Court. Moreover, the party will get two opportunities to get the remedy either before the Sessions Court or before the High Court but if once he approaches the High Court, he would run the risk that, the other remedy is not available to him if he failed to get the order in the High Court, he cannot go before the Sessions Court for the same remedy. However, vice versa is possible.

22. It is also to be notable that the Sessions Court will always be nearest and accessible Court to the parties. Moreover, considering the work load of the courts in the country, the superior courts particularly, the High Courts are flooded with heavy pendency of cases. In order to facilitate the other parties who come before the Court with other cases before the High Court (which has got exclusive Jurisdiction) and also in order to provide alternative remedy to the parties, it is just and necessary that the party shall first approach the Sessions Court under Section 438 of Cr.P.C. so that the High Court can bestow its precious time to deal with other pending cases which requires serious attention and expeditious disposal, where the parties who have come to the High Court after exhausting remedy before the Magistrate Court or the Sessions Court for grant of bail and for other reliefs.

23. The grant of anticipatory bail or regular bail requires appreciation, scrutiny of facts and after going through the entire materials on record. In that context, if the Sessions Court has already applied its mind and passed the appropriate order, it would be easy for the High Court to look into or have a cursory glance of the observation made by the Sessions Court and dispose of the case, with expedition.

24. It is also worth to note here that the Sessions Court and the High Court are concurrently empowered to grant bail under Section 438 of Cr.P.C. The object

is that if the party who is residing in the remote area can directly approach the Sessions Court which is easily accessible. In order to obviate the very object and purpose, the party has to explain why he did not go to that Court. Otherwise, it amounts to making that provision redundant, so far as the Sessions Courts are concerned. Even once again re-looking into structure of Section 438 of Cr.P.C., it is purely the discretionary power given to the Court to entertain the Petition. It is the discretion given to the Courts to exercise that power. When discretion vests with Court, the party has to explain why he has come to the High Court directly, for the discretionary relief under the said provision.

25. Therefore, looking to the abovesaid rulings of different High Courts, I do not find any strong reason to deviate from the said view taken by the other High Courts. Hence, I am of the opinion, the point formulated by me noted above has to be answered accordingly.

26. Hence, I answer the point raised as follows:

"The bail application filed under Section 438 of Cr.P.C. is not maintainable before the High Court without exhausting remedy before the Court of Sessions, which has got concurrent jurisdiction. However, for extraneous or special reasons, the High Court can also exercise such power for grant of the remedy under the said provision."

[7] Heard the arguments made by both the sides and perused the evidence on record.

[8] This Court is conscious that in the event if any opinion is expressed by this Court on merits that would cause an infringement in the investigation for either side. This is only a pre-arrest bail and the petitioner is already facing two criminal cases against him and there are no reasonable grounds indicated in the bail application as to why the anticipatory bail should be entertained under Section 438 Cr.P.C. bypassing the Court of Sessions Judge.

[9] This Court is also conscious with regard to the fact that the petitioner is having right under Section 438 of Cr.P.C either to approach the High Court or the Court of Sessions Judge. But this Court finds force in the submission of learned P.P. and declines to interfere with granting anticipatory bail to Manik Lal Das, i.e the accused-petitioner. The petitioner herein is directed to surrender before the concerned Court on or before 18th August, 2023 and seek appropriate relief by filing appropriate application. On filing of such application, the concerned Court below shall consider the same on merits.

In the above terms, the present anticipatory bail application stands dismissed."

[14] It reveals from the argument of the learned counsel appearing for the parties that the order of the Court has not been complied with by the petitioner and now, the present anticipatory bail application has been filed only on the ground that his wife is unwell and to this count one prescription has also been placed on record. After perusal of the same, it is seen that there is no indication of serious

illness or any report of hospitalization. Without implementing the order of this Court this present application is filed only on the ground as indicated above.

[15] It becomes an obligation on the part of a law abiding citizen to respect and obey the law of the land and the Court proceedings. Generally always the arguments are advanced in writ petitions or in criminal cases saying the respondent has violated doctrine of *audi alteram partem* and not followed procedure contemplated under law and pray for indulgence. But it becomes equally necessary to examine as to what accusation the citizen is facing and was he approached the Court of law with clean hands.

[16] In the backdrop of the allegations against citizen, it would be better to decide whether he is entitled to raise such argument. Citizen also is equally responsible to comply the requirements under the law. Law is not one sided as if only respondents should follow. Even the citizen/petitioner should first make out a *prima facie case* in his favour. A citizen cannot claim/plead equities, where he himself is not following the due process of law. As a law abiding citizen, the accused petitioner first ought to have appeared before the Court of law once summons are issued at first stage and at second stage warrants are issued he ought to have followed as contemplated under Cr. P.C.

[17] This Court does not invite, warranting of discretionary powers Under Section-438 of Cr. P.C. for granting anticipatory bail for an accused person who is already facing criminal cases. In the earlier case investigation is still pending and in the present case also the investigation is pending. This Court finds that there are specific statements made against the accused-person. In view of the above, this Court is of the considered opinion that the accused-person shall surrender before the concerned Court having jurisdiction on or before 20.09.2023.

[18] Accordingly, the instant anticipatory bail application stands dismissed. Return the case diary.

JUDGE

A. Ghosh

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