Serial No. 05
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

AB. No. 1 of 2023

Date of Decision: 20.02.2023

Shri. Pangsrang M. Marak Vs. State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K.Ch. Gautam, Adv.
Mr. C.C.T. Sangma, Adv.

For the Respondent(s) : Mr. H. Kharmih, Addl. PP.
Mr. S. Sengupta, Addl. PP.
Mr. K.P. Bhattacharjee, GA.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT AND ORDER (ORAL)

1. Heard Mr. K.Ch. Gautam, learned counsel appearing on behalf of the applicant.

2. Also heard Mr. H. Kharmih, learned Addl. PP appearing on behalf of the State respondents.

3. Briefly stating the facts leading to the filing of the application herein relates to an incident which occurred on 25.12.2022 at around 7:00 am

at a place called Dakopgre near P.A. Sangma Sports Complex, Tura, wherein two cars coming from opposite directions were involved in a near collusion, as a result of which occupants from one of the cars got down from the car, abused and assaulted occupants of the other car to the extent that injuries were inflicted upon some of the members of the parties present. As a result, the incident did not end at the said initial place of occurrence, but had also extended to another place near Nazing Bazar involving the applicant herein and some other persons. To this effect, an FIR was filed by one of the alleged victim Shri. Alezo Ch. Marak and the same was registered as Araimile P.S. Case No. 2 (1) of 2023 under Sections 326/307/34 IPC.

4. The applicant herein has been named as one of the perpetrators of the assault upon the alleged victim. Apprehending arrest in connection with the said Araimile P.S. Case No. 2 (1) of 2023, the applicant has approached this Court seeking grant of pre-arrest bail, inter alia, on the ground that the applicant is not involved on the alleged offence and that the sections of law cited are not attracted to the case of the applicant. It is further submitted that the applicant has good antecedent and is a young person of 26 years old, and if arrested, his reputation and career may be jeopardized.

5. The learned counsel for the applicant has also submitted that a Non-FIR Case was initially filed in this case and a report was filed by the prosecution on 28.12.2022 in Araimile Non-FIR Case No. 1-4/Pt.1.2022, wherein the incident which took place on 25.12.2022 at the said place of

occurrence was indicated and prayer was made before the concerned Magistrate for proceeding under Section 107 Cr.P.C meaning that maintenance of peace and tranquility in the area between the parties is required to be in force.

6. It is prayed that this petition may be allowed and the applicant may be enlarged on pre-arrest bail with the interim bail issued in this regard being made absolute.

7. The learned Addl. PP has submitted that the statement of the witnesses as well as the medical report would show that grievous injuries have been inflicted upon the victim and considering the gravity and nature of the case, this application may not be considered at this stage.

8. This Court is reminded of the fact that the case is under investigation and that the I/O is yet to file his final report. The fact remains that the said incident has happened is not disputed between the parties, though prima facie, pre-meditation could not be made out in this case. However, as a result of the said alleged incident and assault, injuries may have been caused to the members of the parties involved in the fracas.

9. As provided under Section 438 Cr.P.C for consideration of a case for grant of pre-arrest bail or anticipatory bail, certain factors are required to be considered. These factors have been further elucidated in the case of ***Siddharam Satlingappa Mhetre v. State of Maharashtra & Ors: (2011) 1 SCC 694*** at paragraph 112, wherein the Hon'ble Supreme Court has held that:

"112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;

(viii)While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

10. Considering the antecedent of the applicant and the nature and gravity of the offence, at this juncture, this Court is inclined to allow the

prayer of the applicant. Accordingly, the applicant is hereby allowed to be enlarged on pre-arrest bail. In the event of his arrest, he is to be released on bail on conditions that:

i) He shall not abscond or tamper with the witnesses and evidence;

ii) He shall appear before the I/O as and when required;

iii) He shall not leave the jurisdiction of the State, and if so required, due permission of the I/O or the Court concerned must be sought for;

iv) He shall bound himself by a personal bond of ₹ 30,000/- (Rupees thirty thousand) only along with two sureties of like amount.

11. The interim bail granted is hereby made absolute.

12. With the above, this application is accordingly disposed of.

13. The C.D is hereby returned to the prosecution.

Judge

Meghalaya
20.02.2023
"D. Nary, PS"