

Serial No. 10 & 11
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

A.B. No. 3 of 2023 with
A.B. No. 4 of 2023

Date of Decision: 07.03.2023

Shri Meshwa Dkhar	Vs.	State of Meghalaya
Shri Lowingstone Suchiang	Vs.	State of Meghalaya

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Mr. S. Thapa, Adv.
For the Respondent(s)	:	Mr. B. Bhattacharjee, AAG with Mr. A.H. Kharwanlang, GA.

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

ORDER

1. These two applications has been preferred under Section 438 Cr.PC for grant of pre-arrest bail in connection with a single FIR dated 18.12.2022 for which a police case being Khliehriat PS Case No. 101(12)2022 under Section 307/506/145/34 IPC r/w Section 21(1) of the Mines and Mineral (Development and Regulation) Act, 1957, (MMDR Act) has been registered. Accordingly, it is deemed expedient and convenient to take up

the same together and to pass a common order.

2. Heard Mr. S. Thapa, learned counsel for the petitioners who has submitted that the facts of the case is that on 17.12.2022, at about 9:30-10:00PM or so, the petitioners were driving their respective trucks (Dumper) from Umtyra towards Khliehriat when some people tried to stop their vehicles and since it was night time and the identity of the said persons was not known to them, the petitioners did not stop for fear of their life and property. However, the said persons chased the vehicles they were driving and on realizing that a police vehicle was behind them, the petitioners stopped their vehicles and was thereafter taken to Khliehriat Police Station. At that point of time, a group of unknown people gathered at the police station and used abusing language at the police and apprehending that the situation may turn ugly, the petitioners fearing for their lives fled from the scene. They later came to know that the police had registered an FIR against them numbered as aforementioned.

3. Apprehending arrest, the petitioners has approached the Court of the Sessions Judge/Special Judge, Khliehriat who is dealing with cases under the MMDR Act for grant of anticipatory bail but the same was rejected vide order dated 16.01.2023.

4. The learned counsel has submitted that even looking into the provisions of the alleged offence said to have been committed by the petitioners, the offence under Section 307 IPC cannot be sustained as there is no prima facie evidence to indicate any intended attempt to murder by the petitioners in the whole episode. The other sections are either bailable or minor offences for which bail can be granted.

5. The petitioners being the sole bread earner of their family and having no criminal antecedent, if arrested, their reputation and image in the society will be tarnished for no fault of theirs.

6. It is therefore prayed that this petition may be allowed and that the interim bail granted to the petitioners may be made absolute with any conditions that this Court may deem fit to impose.

7. Per contra, Mr. B. Bhattacharjee, learned AAG has submitted that the case diary as called for by this Court is produced before the Court today and the same is submitted for perusal of the same.

8. Refuting the submissions made by the learned counsel for the petitioner, the learned AAG has submitted that the case is very serious in nature and the fact that the petitioners have been identified as the drivers of the three trucks involved in the incident as stated by the petitioners wherein, on being asked to stop by the police who were on NAKA duty did not do so but instead rammed their vehicle at the police party with the intention to kill them and also to escape checking would only go to show that there is no intention by the petitioners to cooperate with the law enforcing agency.

9. The next part of the incident is when a number of persons who had come to the police station apparently to express support to the petitioners, to the extent that abuses were hurled at the police personnel and in the melee, the petitioners making good their escape would also prove that the petitioners has a guilty conscience.

10. The learned AAG has also submitted that from the case diary, it can be determined that the action of the petitioners does not exhibit a person

who is innocent and the offence being grave, at this stage pre-arrest bail may not be granted and the interim bail granted may be discharged.

11. This Court have given considerable thought to the submission and contention of the parties and have also perused the petition in hand as well as the case diary.

12. Facts as stated above would indicate that the petitioners are accused of not complying with the orders and directions of the law enforcing agency, who while on NAKA duty had directed that petitioners to stop their vehicle, presumably for checking, but the petitioners disregarded the said direction and inspite of some persons being in front of their vehicle, did not stop but proceeded forward, which in all probability could result in a fatal accident. However, this Court will not come to any conclusion at this stage without the evidence being fully collected. A perusal of the case diary would show that there is prima facie evidence that the petitioners are involved in the police case registered against them.

13. The first part of the provision of Section 438 Cr.PC provides that a person who has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, may apply to the High Court or the court of Sessions with a prayer to be released on bail and the court may allow such prayer after taking into consideration the following factors:-

- (i) the nature and gravity of the accusation;
- (ii) the antecedents of the applicant including the fact as to whether he 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; and.
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail...

14. In the case of *Prasanta Kumar Sarkar v. Ashis Chatterjee and Anr.: (2010) 14 SCC 496 at para 9*, the Hon'ble Supreme Court has reiterated the general principle of grant of bail when it has opined that while exercising the power for grant of bail, the court has to keep in mind certain circumstances and factors. The said para is reproduced herein below as:-

“9.... among other circumstances, the factors which are to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to be believed that the accused had committed the offence.*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail.*

15. The main consideration as far as grant of pre-arrest or anticipatory bail is concerned is that, the applicant has to show that he or she apprehends arrest for which the court can exercise this power. In this case, as pointed out, the registration of the police case was in the month of December 2022, the petitioners had preferred an application for grant of pre-arrest bail in the

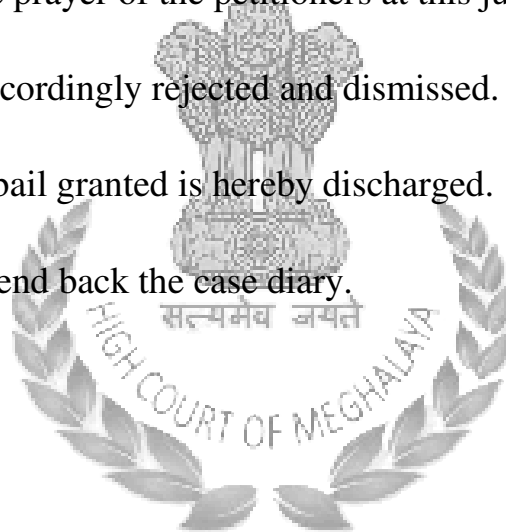
month of January 2023 relatable to the order dated 16.01.2023 passed by the learned Sessions Judge/ADC (J) Khliehriat, East Jaintia Hills rejecting the application. Since the month of January 2023, the petitioners has approached this Court only in the month of March 2023. This would give the impression that there is no apprehension as such which would warrant an immediate approach before this Court.

16. Be that as it may, the fact that the offence alleged is grave and serious in nature, this Court relying on the principles aforementioned, is not inclined to allow the prayer of the petitioners at this juncture.

17. Petition is accordingly rejected and dismissed.

18. The interim bail granted is hereby discharged.

19. Registry to send back the case diary.



Judge

Meghalaya

07.03.2023

"N. Swer, Stenographer"