

HIGH COURT OF MEGHALAYA
AT SHILLONG

AB No. 15 of 2023 with
AB No. 16 of 2023
AB No. 17 of 2023

Date of Decision: 11.08.2023

Shri. Labenn Ch Marak	Vs.	State of Meghalaya
Shri. Balkarin Ch Marak	Vs.	State of Meghalaya
Smti. Bernita R. Marak	Vs.	State of Meghalaya

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	: Mr. S. Deb, Adv.
For the Respondent(s)	: Mr. A. Kumar, AG with Mr. S. Syngkon, GA Ms. A. Thungwa, GA Mr. A.H. Kharwanlang, Addl. Sr. 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 |

COMMON JUDGMENT

1. Separate applications under section 438 Cr.P.C for grant of anticipatory bail was filed by the three petitioners herein. Since the facts and circumstances involved relates to the same FIR dated 25.07.2023 filed by UBI Bitching N. Marak, Circle Inspector (Sadar), West Garo Hills

District out of which, Araimile P.S. Case No. 16(07) 2023 under sections 120B/121/121A/188/307/326/353/435/511/143/147/148/149/150/153/153A /155/158/34 IPC read with section 13 of Unlawful Activities (Prevention) Act and section 6A/6B/8A/8B of Meghalaya (Maintenance of Public Order) Act and section 3/4 of Prevention to Damage to Public Property Act and a common argument being advanced in all three applications, therefore, this Court would deemed it expedient and convenient to pass a common order herein.

2. Heard Mr. S. Deb, learned counsel for the petitioners and Mr. A. Kumar, learned Advocate General (AG) along with Mr. N. Syngkon, learned GA.

3. Before advertng to the submission and contention made by the parties, the background details of the case are required to be briefly recorded. On 05.07.2023 Shri. Thomas M. Marak, President Krima Council ACHIK sought the permission of the Deputy Commissioner, West Garo Hills District to hold a peaceful democratic demonstration in the form of a hunger strike imploring upon the Government to accede to their various demands, implementation of the reservation roster being one of them. The Deputy Commissioner vide order dated 10.07.2023 has allowed such demonstration to be staged on certain terms and conditions.

4. In course of the said demonstration, the Organizers of the same, requested the presence of the Hon'ble Chief Minister to allow them to place their demands before him and accordingly the visit of the Hon'ble Chief Minister along with other dignitaries were scheduled to be held on 24.07.2023

5. The Hon'ble Chief Minister along with the Hon'ble MLA, Williamnagar, the Deputy Commissioner and other officials accordingly

met the ACHIK leaders and other leaders of the NGOs who had participated in the said demonstration at the Mini Secretariat building, Tura.

6. Unfortunately, during the said meeting an untoward incident occurred wherein some persons who were part of a large group of protestors who had converged outside the venue of the meeting started to raise slogans and resorted to stone pelting and assault, as a result of which the situation went out of control and a number of persons, including police personnel were injured. It is said that about 18 police, Home Guards and CRPF personnel sustained injuries in the said incident and about 20 Government and private vehicle were also damaged and burned, with many doors and windows of the Mini Secretariat being damaged. Fortunately, the Hon'ble Chief Minister and other Government Officials were unharmed.

7. In view of such developments involving a crowd of about 500 or so the said FIR was lodged and the said Araimile P.S. Case No. 16(07) 2023 was registered. In course of investigation, initially, the police arrested about 18 suspects.

8. Mr. S. Deb, learned counsel for the petitioners has submitted that the petitioners are not at all involved in the incident though they were present at the place of occurrence on the said date. In fact, the petitioner Shri. Labenn Ch Marak, who is a senior leader of the ACHIK, as well as the petitioner Shri. Balkarin Ch Marak, who is the Co-Chairman of GHSMC and Smti. Bernita R. Marak, who is the General Secretary, ACHIK were in the company of the Hon'ble Chief Minister when the incident took place and as such, they could not have been involved in what happened outside the building.

9. However, the petitioners came to know from credible sources that it

was alleged that they were the actual conspirators of the said incident for which reason the police have started looking for them, apparently to arrest them in this connection. Being apprehensive of the likelihood of arrest, the petitioners have accordingly approached this Court with these instant applications for grant of anticipatory bail.

10. The learned counsel for the petitioners has again submitted that apart from the number of offences under the Indian Penal Code, the inclusion of the provision of section 13 of the Unlawful Activities (Prevention) Act, 1967 and on prayer by the I/O, two days after the filing of these applications, for inclusion of section 15(1)(b)/16 of the said Unlawful Activities (Prevention) Act in the case against the petitioners herein and others was only made to harass the petitioners and to curtail their personal liberty as enshrined in the Constitution of India under Article 21.

11. The learned counsel went on to submit that as far as unlawful assembly is concerned, it cannot be said that the petitioners have taken part in such an assembly when the demonstration that they were part of was conducted peacefully and that too, on being given due permission by the District Administration. Therefore, there being no prima facie evidence against the petitioners, even if this fact is to be established, if the petitioners have been arrested for which the provision of section 43D(5) and the proviso thereto would be applicable. However, even in an application for grant of anticipatory bail, if no prima facie evidence is found against the petitioners, they are entitled to be enlarged on bail in the event of their arrest. In this connection, the case of *Anand Teltumde v. The State of Maharashtra & Ors.*; (2021) 12 SCC 125, wherein at para 2 of the same the Hon'ble Supreme Court dealing with a case for grant of anticipatory bail under section 438 Cr.P.C vis-à-vis section 43D(4) of the UAP Act, has, in other words, held that if a prima facie case is made out, the provision of

section 43D(4) will be applicable, which means that if no prima facie case is made out, an application under section 43D(4) will not be applicable.

12. It is, therefore, prayed that this Court may be pleased to allow these applications and to direct for release of the petitioners in the event of their arrest in connection with the aforementioned Araimile P.S. Case No. 16(07) 2023.

13. On the other hand, the learned AG submitting for the State respondent has submitted that the magnitude of what has happened on 24.07.2023, especially involving high dignitaries no less than the Hon'ble Chief Minister, such incident would indeed qualify as an 'unlawful activity' coming within the definition as found under section 2(o) of the UAP Act. The punishment for such unlawful activities would therefore be under section 13 of the said Act. Again, such act has threatened the unity, integrity and security of the State and is also to attempt to cause death of any public functionary, section 15(1)(b)/16 are also justified in their application to the case of the prosecution.

14. In this backdrop, the applications of the petitioners for grant of anticipatory bail cannot be considered in view of the bar under section 43D(4) of the UAP Act, 1967 further submits the learned AG. In support of this contention, the case of Ahammedkutty Pothiyil Thottiparambil v. Union of India; 2023 SCC Online Ker 5501, para 3, 7, 12, 16, 17 and 18 was referred to.

15. The learned AG has also referred to the contents of the case diary to say that the I/O had affirmatively indicated that the petitioners are very much present on the said day, that is, on 24.07.2023 at the Mini Secretariat building and there are also statements made by witnesses who have stated that they were instigated by the petitioners to protest at the said venue.

Therefore, in view of the above, the learned AG has submitted that this is not a fit case for exercise of powers of this Court under section 438 Cr.P.C.

16. The submission and contention made by the parties have been duly noted by this Court and facts as detailed above need not be repeated, except if so required.

17. Under the facts and circumstances of what has happened on 24.07.2023 and the consequent registering of the police case, investigation is still going on. The I/O in his wisdom has thought it fit that the incident apart from being violent in nature, the presence of the Hon'ble Chief Minister and other dignitaries and obviously being the target of the mob's ire, on being instigated by the petitioners herein and others who have taken part in the said violent action, therefore, a case under the UAP Act, 1967, apart from the penal provisions under the IPC has been made out.

18. From the contents of the case diary, it is found that the involvement of the petitioners in the case has been referred to by some witnesses, however as to the exact role or involvement of the petitioners in the said incident, the I/O has not been able to detail the same. Be that as it may, considering the fact that the nature of the offence is serious and grave, at this juncture this Court cannot interfere with the process of investigation.

19. Given the fact that section 13 of the UAP Act have been included in the case with section 15(1)(b)/16 sought to be added, the applications under section 438 Cr.P.C preferred by the petitioners have to be considered in the light of the provisions of the UAP Act, section 43D(4) being the relevant provision.

20. It would be profitable to bring out the provision of section 43D(4) for a clear picture of what is required to be looked into, the same reads as

follows:

“43D. Modified application of certain provisions of the Code.–

...

(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.”

21. On the applicability of section 43D(4) of the said UAP Act, the case of Ahammedkutty Pothiyil Thottiparambil (*supra*) cited by the prosecution would have persuasive value which this Court also respectfully agrees to. Relevant portions of the said judgment are reproduced herein below:

“12. After the matter was heard and reserved for orders, the learned Deputy Solicitor General of India has brought to the notice of this court, the decision of the High Court of Bombay in Anand Teltumde v. State of Maharashtra, 2020 SCC OnLine Bom 1692, in which an application preferred by an accused in a case registered under the UAP Act for anticipatory bail has been dismissed as not maintainable, rejecting the identical argument put forward by the learned counsel for the appellant that the exclusion of the application of Section 438 of the Code to the offences punishable under the UAP Act is not absolute. The learned Deputy Solicitor General of India submitted that the said decision has been affirmed by the Apex Court in Anand Teltumde v. State of Maharashtra, (2021) 12 SCC 125.

16. As evident from the extracted provisions, sub-section (4) of Section 43D is the provision excluding the application of Section 438 of the Code to any case involving the arrest of any person accused of having committed an offence punishable under the UAP Act....

17. ...If the scheme of the UAP Act is that no person accused of an offence punishable under chapter IV and VI of the UAP Act shall be released on bail unless the twin conditions referred to in sub-section (5) of Section 43D are satisfied, there cannot be any doubt that the Statute does not contemplate grant of anticipatory bail to accused under any circumstance whatsoever, for if the provision is interpreted to hold that the Statute does not bar absolutely the application of Section 438 of the Code, in the absence of any restriction in the Statute in the matter of granting anticipatory bail, it would lead to an anomalous and absurd position that anticipatory bail can be granted to a person accused of an offence punishable under the UAP Act unconditionally and restrictions would apply only in the matter of claiming regular bail. Needless to say, the exclusion of the application of Section 438 of the Code to any case involving any person accused of having committed an offence punishable under the UAP Act is absolute. We take this view also for the reason that the right to seek anticipatory bail is not part of the fundamental right guaranteed to the accused under Article 21 of the Constitution. Having regard to the present dimension and impact of international terrorism on civil society, the UAP Act being a Statute intended for the prevention of, and for coping with terrorist activities, we are also of the view that the Statute is framed excluding the application of Section 438 of the Code to the offences punishable under the UAP Act, consciously. Needless to say, an application for anticipatory bail is not maintainable in respect of offences punishable under the UAP Act.”

22. In response to the reliance of the petitioners on the case of Anand Teltumde(supra), this Court would again agree with what has been observed

in the case of Ahammedkutty Pothiyil Thottiparambil (supra) at para 18 of the same which also reads as follows:

“18. As pointed out by the learned Deputy Solicitor General of India, identical view is taken by the High Court of Bombay also in Anand Teltumde and the decision in the said case has been affirmed by the Apex Court in the case of Anand Teltumde v. State of Maharashtra. We do not find any merit in the argument advanced by the learned counsel for the appellant based on the observations made by the Apex Court in paragraph 2 of the judgment in the said case, for the Apex Court in terms of the said judgment affirmed the view taken by the Bombay High Court that the application for anticipatory bail preferred by the accused involved in that case, is not maintainable. There is also no merit in the argument advanced by the learned counsel for the appellant based on the decision of this Court in Jayarajan P., for this court has not considered in that case the question whether the exclusion of the application of Section 438 of the Code to the offences punishable under UAP Act is absolute.”

23. In conclusion, when there is an express bar under section 43D(4) of the UAP Act, these applications under section 438 Cr.P.C cannot be maintained. The same are hereby rejected.

24. Registry to send back the case diary.

25. Petitions disposed of. No costs.

Judge

Meghalaya
11.08.2023
“Tiprilynti-PS”