

Serial No. 03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

AB No. 48 of 2023

Date of Decision: 20.09.2023

Shri. Mightier Marwein

Vs.

State of Meghalaya & 2 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. P. Yobin, Adv.

For the Respondent(s) : Mr. N. Syngkon, GA with
Mr. J.N. Rynjah, GA (For R 1 & 2)
Mr. N.M. Mansuri, Adv. (For R 3)

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

JUDGMENT (ORAL)

1. Heard Mr. P. Yobin, learned counsel for the petitioner who has submitted that by way of this instant petition made under Section 438 Cr.P.C a prayer is made for grant of anticipatory bail to the petitioner who has been implicated as an accused in connection with Madanrting P.S. Case No. 80(07) of 2023 under Section 315 IPC.

2. The learned counsel has submitted that the respondent No. 3 herein

claiming to be his girlfriend had lodged an FIR dated 29.07.2023 wherein the complainant has claimed to be in a relationship with the petitioner for about a year and four months during which period she became pregnant and the petitioner has advised the complainant to go for abortion. The complainant has, however, insisted that a doctor is to be consulted which was not agreed to by the petitioner. Thereafter, the petitioner allegedly remained incognito and made no contacts with the complainant in spite of repeated number of phone calls and messages on the mobile phone made by the said complainant. Finally, the petitioner had sent some medicine through a friend, which after the said complainant consumed the same, she started bleeding and had to consult a doctor who reprimanded her as to why she took the medicine without consulting a doctor. The complainant had made a prayer for necessary action to be taken against the petitioner for having cheated her. Hence the case was duly registered as aforementioned.

3. The petitioner on coming to know of the said FIR which according to him was based on false and concocted allegations, he has accordingly approached the court of the learned Additional Session Judge, Shillong for grant of anticipatory bail. Initially, interim bail was granted in his favour but by order dated 23.08.2023 the court had eventually rejected the prayer made. Hence this petition.

4. The learned counsel for the petitioner has further submitted that the petitioner is a businessman as well as a politician who has very good antecedents with no criminal records against him and being a respectable citizen in the society, if arrested, his image and reputation will be tarnished.

5. It is also the submission of the learned counsel for the petitioner that from the contents of the FIR, no ingredients of Section 315 IPC are present, in

fact, it would only show that it is the complainant herself who has committed an act punishable under Section 315 IPC and as such, the fact that the Investigating Officer is on the look out to arrest the petitioner would only strengthen the cause for grant of anticipatory bail.

6. The learned counsel for the petitioner also went on to submit that the complainant has cause mental tension and anxiety to the petitioner by sending a series of uncalled for text messages on his mobile phone and even on the phone of his wife, such messages being intimidating in nature and with the intention to malign the reputation of the petitioner. Reference being made to the said medicine which according to the complainant is supposed to be sent by the petitioner to her.

7. In support of his contention the learned counsel has referred to the case of *Alim Asghar Khan v. State of Maharashtra: 2019 SCC Online Bom 7556* and also to the case of *Kashif Mohd. Arif Shaikh v. State of Maharashtra: 2018 SCC Online Bom 16447* wherein in similar circumstances as is found in the present case, in both the case referred to, the Hon'ble Bombay High Court had allowed the prayer made for grant of anticipatory bail to the petitioner therein.

8. The case of *Hammed Balogun v. State of Meghalaya & Anr.: 2021 SCC Online Meg 180* was also referred to by the petitioner to submit that in this case this Court relying in the case of *Siddharam Satlinggappa Mhetre v. State of Maharashtra: (2011) 1 SCC 694* wherein at para 112 of the same the factors and parameters for grant of anticipatory bail has been laid down, the application for grant of anticipatory bail was accordingly allowed.

9. If anticipatory bail is granted, the petitioner would comply with any

conditions imposed by this Court, submits the learned counsel.

10. Mr. N. Syngkon, learned GA has submitted that investigation is still on going and as such, it is only on conclusion of the same that the I/O will come to a finding as to whether the petitioner has committed the alleged offence or not. It is also submitted that copies of the statement of the complainant made under Section 164 Cr.P.C as well as of other relevant witnesses are duly produced before this Court for due consideration.

11. The complainant/respondent No. 3 appearing through learned counsel, Mr. N.M. Mansuri has strongly opposed the prayer made in this petition and has submitted that the fact that there is a relationship between her and the petitioner cannot be denied. The statement of the respondent No. 3 as indicated, clearly brings out the correct picture of the case inasmuch as she given an account of her relationship with the petitioner from the time, they became acquainted in the month of March, 2022 and also the fact that the petitioner in course of his relationship with her had promised that he will divorce his wife and will marry her. Again, as a consequence of their close relationship the respondent No. 3 became pregnant from the petitioner and thereafter in order to terminate the pregnancy, the petitioner told her that the baby should be aborted to which she refused. It was only then that the petitioner cut off his communication with her and when he came to her house after a few days he again insisted that she take the medicine and, on her refusal, to do so, on 20.07.2023 he sent his PSO who came to her residence and force her to take the medicine at gun point upon which she eventually consumed the same resulting in heavy bleeding for which she had to consult a doctor.

12. In the light of what has transpired between the petitioner and the

complainant, the learned counsel for the complainant/respondent No. 3 has submitted that this is not a fit case for grant of anticipatory bail since the I/O would require a detailed investigation into the matter including all the materials involved in the case.

13. This Court has duly considered the submission made by the respective counsels for the parties and has also perused the relevant papers produced by the learned GA. Though the petitioner has denied having any relationship with the complainant/respondent No. 3, the fact that she had issued text messages to him on his mobile would prove otherwise for no stranger would issue such kind of messages as the one said to have been issued by the complainant/respondent No. 3. The learned counsel for the complainant/respondent No. 3 has also produced copies of photographs showing the petitioner in the company of the complainant. Though the veracity of such piece of evidence has to be tested at the trial, prima facie there is no denying the fact that the petitioner and the complainant are known to each other.

14. It is well settled that for a prayer for grant of anticipatory or pre-arrest bail, the main consideration would be that there is a reasonable apprehension of arrest in connection with a criminal proceeding, whether at the investigation stage or when the matter is before the court. If such apprehension is made out, the court may consider the prayer for grant of anticipatory bail. However, in the case of ***Siddharam Satlinggappa Mhetre***(supra) referred to herein, the parameters to be taken into consideration while dealing with such application for anticipatory bail has been set out. One of such factors is the nature and gravity of the accusation. In this case, the fact that the complainant is an adult and is responsible for her own conduct, that

she was in a relationship with the petitioner was apparently based on mutual consent. That the allegation that she was forced to abort her unborn baby consequent to the conduct of the petitioner is a matter of evidence.

15. In the case of **Alim Asghar Khan**(supra) as well as in the case of **Kashif Mohd. Arif Shaikh**(supra) referred to by the learned counsel for the petitioner, this Court, as submitted on perusal of the same has noticed the similarity of the facts and circumstances of the case therein with the present case. In both cases, the Hon'ble High Court had granted anticipatory bail to the applicant therein.

16. In the case of **Siddhart v. State of U.P: 2021 SCC Online 615** referred to by the petitioner the Hon'ble Supreme Court has observed as follows:

“We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the investigating officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.”

17. On an analysis of the facts and circumstances and the materials on record as far as this case is concerned, this Court is persuaded to believe that the apprehension of the petitioner that he may be arrested in connection with the said Madanrting P.S. Case No. 80(07) of 2023 is well founded. Considering the nature of the case, this Court is inclined to allow the prayer made.

18. Accordingly, the petition is allowed. In the event of his arrest, the petitioner is directed to be released on bail on the following conditions:

- i. That he shall not abscond or tamper with the evidence and witnesses;
- ii. That he shall not leave the jurisdiction of the State of Meghalaya without prior permission of the I/O or the court concerned;
- iii. That he shall cooperate with the I/O or the court concerned as and when required;
- iv. That he shall bind himself on a bond of ₹ 50,000/- (Rupees fifty thousand) only with one surety of like amount to the satisfaction of the I/O or the court concerned.

19. Needless to say, violation of any of the conditions imposed would allow the prosecution to proceed for cancellation of bail in accordance with law.

20. The interim order dated 30.08.2023 is hereby made absolute.

21. With the above, this petition is hereby disposed of. No costs.

Judge

Meghalaya
20.09.2023
"Tiprilynti-PS"