

Serial No. 03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

AB No. 8 of 2024

Date of Decision: 16.05.2024

Shri Mostofa SK,
S/o Mofial SK
R/o Lalmati (Kasiripara)
P.O. & P.S. Hallidayganj,
West Garo Hills District,
Meghalaya.

... Applicant(s)

- Versus -

1. State of Meghalaya
Represented by the
Secretary to the Govt. of Meghalaya
Home(Police) Department,
West Garo Hills District,
Meghalaya.
2. Investigating Officer,
Hallidayganj Police Station
West Garo Hills District,
Meghalaya.

.... Respondent(s)/Opposite Parties

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner(s)	:	Mr. K. Ch. Gautam, Adv. with Ms. R. Kharshiing, Adv.
For the Respondent(s)	:	Mr. N.D. Chullai, AAG with Mr. E.R. Chyne, GA

ORDER (ORAL)

1. This matter has come up for hearing today on the production of the case diary by the State/Opposite parties.
2. Heard Mr. K Ch. Gautam, learned counsel for the applicant who had briefly narrated the facts of the case to say that the applicant is apprehending arrest in connection with Hallidayganj P.S. case No. 4 (04) of 2024 under section 302/34 IPC. The case was registered following an FIR lodged by one Hafizur Rahman on 08.04.2024, wherein it was stated that he was the brother of the deceased Hashidur Rahman who was brutally assaulted by a number of people on 07.04.2024 at a place called Lalmati field, having sustained serious injuries on his person, the deceased was immediately shifted to the District Hospital, Hatsngimari where he succumbed to his injuries the following morning.
3. The learned counsel has further submitted that the deceased victim was a habitual offender involved in several crimes like robbery, burglary and dacoity and on that fateful day, while committing theft at Lalmati bazaar, he was caught red-handed by the public who assaulted him.

4. The applicant on noticing the commotion, approached the place of occurrence and since he is a prominent local leader and the former Secretary of the Village Executive Committee (VEC), the public requested him to take the offender/victim to the police station. The applicant accordingly took the victim in his car to the police station. He was accompanied by one Samiul Islam. Thereafter, the applicant left the police station.

5. It is also the case of the applicant that on the next day, he was informed that the victim had succumbed to his injuries at the District Hospital, however, the applicant maintains that he is not involved in the assault upon the deceased victim and has no connection with the incident except to the extent as indicated hereinabove.

6. The learned counsel has also submitted that the applicant has reliably learnt that the police are now on the lookout for his arrest and under such apprehension, this instant application with a prayer for grant of pre-arrest bail under section 438 Cr.P.C. is preferred before this Court.

7. The learned counsel went on to submit that the applicant is a prominent leader of the area with an influential standing before the society, he also has no criminal record or antecedent to attract the

attention of the police and therefore, if arrested, his image and reputation will be tarnished.

8. It is also the submission of the applicant through his counsel that in the event this Court is pleased to allow the prayer made in this petition, he is willing to abide by any conditions imposed and to furnish adequate security as demanded with the further commitment that he will not abscond or tamper with evidence and also that he will cooperate with the investigation as and when required.

9. The learned counsel has also candidly admitted that the applicant had moved the Court of the learned Sessions Judge, Tura with a similar prayer for grant of pre-arrest bail, however, vide order dated 02.05.2024 in BA No. 57/2024, his application was rejected and the interim bail passed earlier was vacated.

10. In support of his contention, the learned counsel has referred to the case of *Ashok Kumar v. State of Union Territory Chandigarh, 2024 SCC OnLine SC 274*, wherein at paragraph 11 and 12 of the same, the Hon'ble Supreme Court has observed as follows:-

“11. One good ground which has persuaded us to exercise our discretion in favour of the appellant is that the appellant has already joined the investigation. He has cooperated in the investigation so far.

“12. There is no gainsaying that custodial interrogation is one of the effective modes of investigating into the alleged crime. It is equally true that just because custodial interrogation is not required that by itself may also not be a ground to release an accused on anticipatory bail if the offences are of a serious nature. However, a mere assertion on the part of the State while opposing the plea for anticipatory bail that custodial interrogation is required would not be sufficient. The State would have to show or indicate more than prima facie why the custodial interrogation of the accused is required for the purpose of investigation.”

11. Per contra Mr. N.D. Chullai, learned AAG assisted by Mr. E.R. Chyne, learned GA while opposing the prayer made by the applicant has firstly led this Court to Annexure-II at Page-12 of this petition, wherein is found the order dated 02.05.2024 passed by the learned Sessions Judge in BA No. 57/2024 and has submitted that the learned Sessions Judge after considering the facts and circumstance of the case and the submission made by the parties and on perusal of the case diary has observed that the contents of the case diary would show that there is prima facie case against the petitioner/accused person, the applicant herein and there are witnesses who have seen him assaulting the deceased victim with a cricket bat, such observations being the basis for rejection of the said bail application of the applicant herein.

12. The learned AAG has also referred to the case diary particularly the statement of two eye-witnesses made under section 161 Cr.P.C., who have categorically stated that they have seen the applicant and the deceased victim arguing in front of the shop of one of the said witnesses, the applicant, after a heated argument had taken a cricket bat displayed outside the shop and had assaulted the deceased victim with the same. Thereafter, the applicant pushed the deceased victim in his car and drove away. This, according to the learned AAG is the clinching evidence of the involvement of the applicant in the assault and subsequent death of the deceased victim. The nature of the case and the extent of the offence being very serious and heinous, it would not be proper for the applicant to be allowed to go on pre-arrest bail.

13. This Court on consideration of the submission and contentions of the parties and also on perusal of the petition and the case diary is inclined to agree with the learned AAG that there is prima facie evidence to link the applicant to the assault and subsequent death of the deceased victim.

14. The main thrust of the argument advanced by the learned counsel for the applicant is that in this case, this Court had earlier allowed the applicant to go on interim bail and within such period,

the applicant had fully co-operated with the investigation and was questioned by the Investigating Officer from time to time, therefore reliance on Para 11 and 12 of the Ashok Kumar case (supra) is deemed proper, wherein the Court has observed that if the appellant has already joined the investigation, the State opposing the plea for anticipatory bail on the ground that custodial interrogation is required would not be sufficient. Such proposition being equally applicable to the case of the applicant herein. However, in the same breadth the Hon'ble Supreme Court at para-12 has also remarked that irrespective of whether custodial interrogation is required or not, that by itself may also not be a ground to release an accused on an anticipatory bail if the offences are of a serious nature.

15. At this juncture it would not be out of place to briefly discuss the scope and ambit of the concept of anticipatory bail. The answer to this has already been spelt out by the Hon'ble Supreme Court in the case of *Siddharam Satlingappa Mhetre v. State of Maharashtra* reported in (2011) 1 SCC 694, wherein at paragraph 23 and 24 the observations is as follows:-

23. The Constitution Bench of this Court in [Gurbaksh Singh Sibbia v. State of Punjab](#) (1980) 2 SCC 565 had an occasion to comprehensively deal with the scope and ambit of the concept of anticipatory bail. [Section 438 Cr.P.C.](#) is an extraordinary provision where the accused who apprehends

his/her arrest on accusation of having committed a non-bailable offence can be granted bail in anticipation of arrest. The Constitution Bench's relevant observations are set out as under:

"21.....A wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use. Every kind of judicial discretion, whatever may be the nature of the matter in regard to which it is required to be exercised, has to be used with due care and caution. In fact, an awareness of the context in which the discretion is required to be exercised and of the reasonably foreseeable consequences of its use, is the hall mark of a prudent exercise of judicial discretion. One ought not to make a bugbear of the power to grant anticipatory bail".

24. Mr. Bhushan referred to a Constitution Bench judgment in [Sibbia's case](#) (supra) to strengthen his argument that no such embargo has been placed by [the said judgment](#) of the Constitution Bench. He placed heavy reliance on para 15 of [Sibbia's case](#) (supra), which reads as under:

"15. Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions. And it will be strange if, by employing judicial artifices and techniques, we cut down the discretion so wisely conferred upon the courts, by devising a formula which will confine the power to grant anticipatory bail within a strait-jacket. While laying down cast-iron rules in a matter like granting anticipatory bail, as the High Court has done, it is apt to be overlooked that even judges can have but an imperfect awareness of the needs of new situations. Life is never static and every situation has to be assessed in the context of emerging concerns as and when it arises. Therefore, even if we were to frame a 'Code for the grant of anticipatory bail', which really is the business of the legislature, it can at best furnish broad guidelines and cannot compel blind adherence. In which case to grant bail and in which to refuse it is, in the very nature of things, a matter of discretion. But apart from

the fact that the question is inherently of a kind which calls for the use of discretion from case to case, the legislature has, in terms express, relegated the decision of that question to the discretion of the court, by providing that it may grant bail "if it thinks fit". The concern of the courts generally is to preserve their discretion without meaning to abuse it. It will be strange if we exhibit concern to stultify the discretion conferred upon the courts by law."

16. The above would provide the contour and perhaps the parameter of what would entail discretionary power to be exercised by the court, vis-à-vis grant or refusal of anticipatory bail. It cannot be missed out that while exercising discretionary powers as far as bail matters are concerned, the court would be guided by the facts and circumstances of a particular case. This would be best understood by referring to para 111 of Siddharam Satlingappa Mhetre case (supra), which is reproduced hereinbelow as:-

"111. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualized for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case. As aptly observed in the Constitution Bench decision in Sibbia's case (supra) that the High Court or the Court of Sessions to exercise their jurisdiction under [section 438 Cr.P.C.](#) by a wise and careful use of their discretion which by their long training and

experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.”

17. Again, at para 112 of the Siddharam Satlingappa Mhetre case, the Apex Court had laid down some factors and parameters to be taken into consideration while dealing with anticipatory bail, which reads as follows:-

“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 the 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 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

over implication 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.”

18. Considering the serious nature of the case in question, this Court, particularly relying on the said statement of the eye-witnesses, would opine that prima facie there appears to be evidence linking the applicant with the alleged assault and subsequent death of the deceased victim.

19. Therefore, on overall analysis of the facts and circumstances of this case, this Court finds that the applicant has not been able to make out a case for grant of pre-arrest bail.

20. Consequently, this application is hereby dismissed as devoid of merits. The interim bail granted is hereby vacated.

21. The petition is disposed of. No costs.

JUDGE

Meghalaya
16.05.2024
"V. Lyndem-PS"