



Serial No. 03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

AB No. 9 of 2024

Date of Decision: 19.06.2024

Shri. Samarjit Mohanty
 S/o Sh. Rabi Mohanty,
 R/o Near Town Hall, Spiti, Jagatsinghpura,
 Odisha-754103

.....Petitioner

versus

1. State of Meghalaya & Ors.
 Represented by its Commissioner and
 Secretary Home Police Department
2. The Superintendent of Police
 East Khasi Hills, Meghalaya
3. The Investigating Officer, P.S.:
 Sadar, Shillong
4. The Director, Distribution
 Meghalaya Power Distribution
 Corporation Limited

.....Respondent

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

- | | |
|---------------------------------|---|
| For the Petitioner/Appellant(s) | : Mr. K. Paul, Sr. Adv. with
Mr. S. Chanda, Adv.
Mr. R. Raj Jain, Adv. |
| For the Respondent(s) | : Ms. T. Yangi. B, AAG with
Mr. J.N. Rynjah, GA (For R 1-3)
Mr. A.S. Pandey, Adv. (For R 4) |



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

ORDER (ORAL)

1. Heard Mr. K. Paul, learned Sr. counsel appearing for the petitioner who has submitted that an FIR dated 26.05.2023 was lodged before the Officer-in-Charge, Sadar Police Station, Shillong by the Director, (Distribution) Meghalaya Power Distribution Corporation Limited (MePDCL), Shillong on the allegation that M/s Feedback Energy Distribution Company Ltd. (FEDCO) had defrauded the corporation by withholding the money owed to the Corporation amounting to ₹ 15,000,000/- (rupees fifteen crore) only which money relates to the collection of bills etc. entrusted to M/s FEDCO for four areas that is, Mawkyrwat, Mawsynram, Nagalbibra and Phulbari Revenue Sections for which the proceeds is required to be handed over to the MePDCL and was not done so. Hence the FIR.

2. The FIR was registered as Sadar P.S. Case No. 130(05) of 2023 under Section 409 IPC and apparently investigation was launched.

3. It is the submission of the learned Sr. counsel that unbeknownst to the petitioner, the Investigating Officer (I/O) has filed an application under Section 73 Cr.P.C before the Court of the learned Assistant to the Deputy Commissioner (Judicial), Shillong with a prayer for issuance of a non-bailable warrant of arrest against the petitioner.



4. It has also subsequently come to the knowledge of the petitioner that the I/O had taken steps for issuance of notice under Section 91 Cr.P.C and also one under Section 41A Cr.P.C directed against the petitioner to compel him to appear before the said I/O. The petitioner on coming to know of such proceedings had issued a letter dated 30.01.2024 to the I/O to inform him that he had not receive any notice and that copy of such notice may be issued to him. He has also expressed his willingness to cooperate with the investigation.

5. The petitioner being a resident of Orissa at the relevant point of time, as soon as he came to know of the issuance of the said non-bailable warrant of arrest had approached the Hon'ble High Court of Orissa with an application seeking transit anticipatory bail which was granted to him vide order dated 25.04.2024 in ABLAPL No. 15446 of 2023, by which order he was directed to either appear before the concerned court within six weeks from the date of the said order or that he should move for bail which is done so by way of this petition.

6. The learned Sr. counsel has submitted that in a nut shell the dispute between the parties that is, between the complainant/MePDCL and M/s FEDCO represented by the petitioner herein who is the then CEO arose out of a contractual agreement between the parties wherein vide a Distribution Franchisee Agreement (DFA) dated 18.03.2019, FEDCO was authorised to sell and supply electricity as well as to collect the bills of such sale from four areas that is, Mawkyrwat, Mawsynram, Nagalbibra and Phulbari Revenue Sections respectively, proceeds of which is to be handed over to the complainant/Company.



7. In the course of business, the complainant had made several allegations against FEDCO and had also demand payment of outstanding amount of ₹ 15.37 crores. The demand was accompanied by a Preliminary Notice of Termination of the said DFC. FEDCO had accordingly replied to the said notice and has also requested the complainant to withdraw the said Preliminary Notice of Termination. While correspondences were exchanged between the parties in respect of the said dispute or misunderstanding, the said FIR dated 26.05.2023 was filed.

8. It is also the submission of the learned Sr. counsel that even if there is any dispute between the parties, the same is in the nature of a civil dispute and no criminality can be imputed as far as the petitioner or FEDCO is concerned. In fact, the complaint made under Section 409 IPC has no credence as the complainant has not been able to show how an offence under such section has been committed by the petitioner or FEDCO. At most, it is just an issue of delay of making payment which has accumulated to a huge sum of about ₹ 15 crores or so.

9. At the hearing, the learned Sr. counsel has produced details of the payment made to the complainant/Company starting from the financial year 2019-2020 wherein a sum of ₹ 8,0992,254/- was paid. Even after the said FIR was filed, on 02.06.2023 a sum of ₹ 1,18,36,022/- was paid for the financial year 2023-2024 and another sum of ₹ 1,43,38,232/- was also paid on the same day. Till 22.03.2024 a total sum of ₹ 19,36,83,409/- has been paid. As for the month of April and May 2024, a sum of ₹ 5,78,09,399/- has been paid. This will only prove that continuous payments have been made by FEDCO.



10. In view of the bona fide of the petitioner and FEDCO represented by him, the substance of the complaint made and the intended course of action to apprehend the petitioner will not stand the scrutiny of judicial process. In this context, considering the fact that the threat of arrest looms large, the petitioner may be given due protection by granting him anticipatory bail.

11. It is also the further submission of the learned Sr. counsel that during the intervening period when this Court had granted interim bail to the petitioner, he has appeared before the I/O and has also given his statement on 11.06.2024. Therefore, there is no requirement of custodial interrogation.

12. It is therefore prayed that the prayer for grant of anticipatory bail may be allowed with any conditions that this Court may deem fit to impose.

13. Ms. T. Yangi, B, learned AAG appearing on behalf of the State respondent has submitted that on being directed the status report of the case has been produced before this Court today and on perusal of the same this Court may pass necessary orders.

14. Mr. A.S. Pandey, learned counsel appearing for the respondent/MePDCL has admitted that since the filing of the FIR in May 2023 the MePDCL has received an amount of ₹ 9 crores or so, though the exact amount received till date could not be ascertained, submits the learned counsel. If the petitioner is cooperating with the investigation, this respondent will have no objection to the prayer made herein.



15. This Court has considered the submission made by the learned counsels for the parties and has also perused the status report of the case filed by the I/O. The I/O in his report has also confirmed that when investigation began, FEDCO had remitted certain amount of money to the complainant and to MePDCL and about ₹ 9,25,00,000/- (rupees nine crores twenty-five lakh) only have been paid however, the I/O has also noted that from the bank statement provided by the petitioner herein, till May 2024 an amount of ₹ 12,53,18,554/- has been paid to MePDCL.

16. Though this Court would not go into the merits of the allegations made in the said FIR, suffice it to say that from the submission made by the parties what can be understood is that there is dispute relating to payment of dues by FEDCO represented by the petitioner herein as the then CEO to the MePDCL which have not been cleared by FEDCO following which the said FIR was filed.

17. However, as far as the investigation is concerned, the assertion of the petitioner that a substantial amount has been remitted in favour of the MePDCL towards the demand made amounting to about 12,53,18,554/- till the month of May 2024, the same also being agreed to by the respondent/MePDCL would only prove that the dispute between the parties is civil in nature which could have been solved amicably between the parties. However, the criminal aspect of the case is a matter of trial.

18. As far as the prayer for grant of anticipatory bail is concerned, this Court under the facts and circumstances of the case and looking into the complicity of the petitioner in the same, would agree that the petitioner has reason to believe that he may be arrested in connection with the case registered on the basis of the said FIR dated 26.05.2023. In the case of



Shri. Gurbaksh Singh Sibbia & Ors. v. State of Punjab, (1980) 2 SCC 565, at para 35, the Hon'ble Supreme Court has observed as follows:

“35. Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant must show that he has "reason to believe" that he may be arrested for a non-bailable offence. The use of the expression "reason to believe" shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief', for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be so arrested. Section 438(1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applications for anticipatory bail will be as large as, at any rate, the adult populace. Anticipatory bail is a device to secure the individual's liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely.”

19. It is also well settled that a competent court while dealing with a case wherein prayer for grant of anticipatory bail is concerned certain factors and parameters can be taken into consideration. Such factors have also been illustrated in the case of Siddharam Satlingappa Mhetre v. State of Maharashtra & Ors., (2011) 1 SCC 694, at para 112 wherein the Hon'ble Supreme Court has held 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 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 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.”

20. Looking into the facts and circumstances of this case, this Court is of the considered opinion that the petitioner be granted anticipatory bail.



21. This petition is therefore allowed and the petitioner is directed to be enlarged on bail, in the event of his arrest, if he is not wanted in any other case on the following conditions: -

- i. That he shall not abscond or tamper with the evidence and witnesses;
 - ii. That he shall appear before the Investigating Officer as and when required;
 - iii. That he shall not leave the jurisdiction of India without prior permission of the court; and
 - iv. That he shall furnish a personal bond of ₹ 50,000/- (rupees fifty thousand) only with two solvent sureties of like amount to the satisfaction of the concerned I/O.
22. The interim bail granted is hereby made absolute.
23. Petition disposed of. No costs.

Judge

Meghalaya
19.06.2024

TIPRILYNTI
KHARKONGOR

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