

GAHC030003742024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./11/2024

Madhurjya Sarmah
Salem Veng, Mualpui, House no. ZC-11, Near Rajiv Gandhi Stadium
P.S.- Kulikawn, Aizawl, 796005, Mizoram

VERSUS

State of Mizoram and Anr.
Aizawl

Advocate for the Petitioner : Mr. Angshuman Bora, Sr. Adv.

Advocate for the Respondent : P.P./Addl.PP, Mizoram

B E F O R E
HON'BLE MRS. JUSTICE MALASRI NANDI
ORDER

25.06.2024

Heard Mr. A.M. Bora, learned Senior Counsel, assisted by Mr. V.A. Choudhury, learned counsel, appearing for the petitioner. Also heard Mr. D. Das, learned Senior Counsel, assisted by Mr. Lalfakawma, learned counsel appearing for the respondent No. 2 and Mrs. Linda L. Fambawl, learned Public Prosecutor appearing for the respondent No. 1.

2. The petitioner has preferred this application under Section 482 CrPC for quashing the impugned Order dated 22.05.2024 passed by the learned Sessions Judge, Aizawl in connection with Criminal Revision Petition No. 14/2024 and the Order dated 04.06.2024 passed by the learned CJM, Aizawl in Aizawl PS Case No. 96/2024 allowing three days Police custody to the petitioner.

3. The factual matrix leading to this application is that an FIR has been lodged by the respondent No. 2 before the Officer in Charge, Aizawl Police Station stating inter alia that the informant is a Company incorporated under the Companies Act, and the said Company is dealing with the business of advancing loans/ finances for the purpose of purchasing motor vehicles, leasing of the vehicles etc. It is alleged that during the routine verification, the authority of the company asked their area business Manager Mr. Jakir Hussain as to who had sanctioned the loan accounts which were processed through his subordinates Mr. Joseph VL CV Ralte and Mr. Edenthara and asked him to submit the extract of registration certificate of vehicles in question but it was noticed that all PDF copies provided by Jakir Hussain shows same QR code with different number. The certificates submitted by Jakir Hussain appears to be fake. Further, they suspected that their employees in collusion with dealer of the car dealership and his representatives, the borrowers and guarantors as well as some unknown accused had cheated their organizations. On receipt of the complaint, a case was registered vide Aizawl PS Case No. 96/2024 under Sections 408/467/468/34 IPC.

4. Learned counsel for the petitioner has submitted that in connection with

Aizawl PS Case No. 96/2024, the petitioner was arrested on 14.05.2024 but he was produced before the learned CJM on 16.05.2024 in gross violation of the provision of Section 167 of CrPC. It is the duty of the arresting Police Officer to produce the arrested accused before the concerned Magistrate within 24 hours of his arrest. On being produced before the learned CJM, Aizawl, the engaged lawyer of the petitioner submitted on behalf of the petitioner and the learned APP also appeared for the State. Upon hearing the matter from both sides, vide Order dated 16.5.2024, the learned CJM, Aizawl released the petitioner from the custody and the prayer of the Police remand was rejected.

5. Against the order of learned CJM, Aizawl dated 16.05.2024, the informant / respondent No. 2 approached before the Sessions Judge by filing a criminal revision petition under Section 397 CrPC challenging the legality and validity of the said order. After hearing both sides, the learned Sessions Judge, Aizawl vide order dated 22.05.2024 quashed the order dated 16.05.2024 passed by the learned CJM, Aizawl and directed the learned CJM to consider the remand or bail afresh in accordance with law. Thereafter, on the basis of the order passed by the learned Sessions Judge, Aizawl, the learned CJM has issued notice to the petitioner and other co-accused for deciding the issue of remand or bail of the petitioner.

6. By that time, the petitioner got admitted in the hospital at Aizawl due to some health issues. After hearing the parties, on the issue of police remand or bail of the petitioner, learned CJM had passed the order dated 04.06.2024 allowing three days police custody of the petitioner. According to learned counsel for the petitioner, allowing three days police custody of the petitioner

without cancelling his bail granted by learned CJM, Aizawl vide Order dated 16.05.2024 is in gross violation of law.

7. It is further submitted by learned counsel for the petitioner that the rejection of police remand under Section 167 CrPC is an interlocutory order and against the said order, the criminal revision petition is not maintainable. Hence, the order passed by the learned Sessions Judge dated 22.05.2024 is illegal and not tenable in law.

In support of his submission, learned counsel for the petitioner has placed reliance on the following case laws:-

- a) **(2022) 13 SCC 542 (*Gautam Navalakha Vs. National Investigation Agency*).**
- b) **(2014) 1 SCC 258 (*Prgaya Singh Vs. National Investigation Agency*)**

8. By referring the judgment of ***Satender Kumar Antil Vs. CBI & Another***, reported in **(2022) 10 SCC 51**, the learned counsel for the petitioner has pointed out that the Hon'ble Supreme Court has held in the said case that the investigating agencies and their officers are duty bound to comply with the mandate of Sections 41 and 41(A) of the Code. The Courts will have to satisfy themselves on the compliance of Sections 41 and 41 (A) of the CrPC. Any non-compliance would entitle the accused for grant of bail.

9. In response, learned counsel for the informant/respondent No. 2 submits

that the petitioner is one of the Director of AIDU Motors, a Renault dealership, Aizawl, Mizoram. After his arrest on 15.05.2024, the petitioner was released on 16.05.2024 by the order of learned CJM, Aizawl on the ground that the provisions of Section 41 CrPC has not been complied with. As notice under Section 41 (A) has not been served upon the accused petitioner, therefore, the arrest of the petitioner was held to be illegal and rejected police custody of the petitioner. It is further submitted that no bail application was considered by the learned CJM at that time and no such bail application was pressed by the petitioner. Therefore, it is apparent that no bail was granted to the petitioner by the Order dated 16.05.2024.

10. It is also submitted by learned counsel for the respondent No. 2 that the rejection of remand Order vide dated 16.05.2024 passed by the learned CJM, Aizawl is not an interlocutory order, but a final order. As per judgment of the Hon'ble Supreme Court in the case of ***Amar Nath & Others Vs. State of Haryana & Another***, reported in ***(1977) 4 SCC 137***, it was held that the term "*interlocutory order*" in Section 397 (2) of CrPC has been used in a restricted sense and not in any broad or artistic sense. It merely denotes order of a purely interim or temporary nature which do not decides or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused or decides certain right of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order because that would be against the very object which form the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, order summoning witnessing, adjourning cases, passing order for bail, calling for report such other steps in aid of the pending proceeding may no

doubt amount to interlocutory order against which no revision could lie under Section 397 (2) of the 1973 Code. But order which are matter of moment and which affect or adjudicate the right of the accused or a particular aspect of a trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court.

11. Learned counsel for the respondent No. 2 has also referred another Judgment, reported in **(2010) SCC Online BOM 1968 (Ambarish Rangshahi Patnigira Vs. State of Maharashtra)**, wherein it was observed as follows:-

“.....the learned Magistrate had jurisdiction to consider the bail application and to grant bail. Still taking into consideration seriousness and gravity of the matter, it was highly improper on the part of the learned Magistrate to show such haste in considering the application immediately and making endorsement on the bail application minute to minute and refusing reasonable opportunity to the investigating agency to oppose that application. I find that the order passed by the Magistrate granting bail was without application of mind to the facts of the case. By granting bail refusing police custody of the accused who were not in police custody even for a bail, the learned Magistrate practically prohibited the investigating agency from making proper investigation to the case which, in fact, required in-depth investigation and which could not be possible without police custody. Therefore, while the order refusing the police custody could be challenged under revisional jurisdiction under Section 397, the order granting bail could be cancelled by the

superior court, including the sessions court, by virtue of the power under Section 439 (2) CrPC”.

12. Another point raised by learned counsel for the respondent No. 2 that the present criminal petition has become infructuous as a petitioner has already approached before the jurisdictional court seeking bail which was rejected by the Magistrate.

13. Learned Public Prosecutor has also argued in the same tune by stating that several cases have been registered against the accused petitioner relating to the same kind of offences. He is an habitual offender. Accordingly, the learned PP has prayed for dismissal of the present criminal petition.

14. Having heard the learned counsels for the parties, two fold questions are to be determined-

a) whether the accused petitioner was produced before the learned CJM, Aizawl on 16.5.2024 beyond the period of 24 hours of his arrest by violating the provision of Section 167 CrPC !

b) whether rejection of remand order is an interlocutory order as such not revisable by invoking the provisions of Section 397 CrPC !

15. Admittedly, the accused petitioner was produced before the CJM, Aizawl on 16.5.2024, but it is not reflected from the order when the accused petitioner was arrested. It is noticed that prayer for police remand was rejected without perusal of case diary. However, from the order of learned Judicial Magistrate

1st Class, Aizawl dated 13.06.2024, on perusal of case diary, learned Magistrate observed that the accused petitioner was arrested on 15.05.2024 and subsequently, he was produced before the learned CJM, Aizawl on 16.05.2024 within 24 hours of his arrest. As such, there was no irregularity as pointed out by learned counsel for the accused petitioner.

16. Regarding rejection of remand, it is contended by learned counsel for the petitioner that the revision application preferred by the respondent No. 2/informant before the Sessions Court against the order of CJM dated 16.05.2024 was not tenable at law and therefore, the impugned order passed by the learned Sessions Judge on 22.05.2024 and the subsequent order of police remand for three days by the learned CJM, Aizawl on 04.06.2024 deserve to be quashed and set aside.

17. The aforesaid contention raised by the learned counsel for the accused petitioner is not acceptable for the reason as the law laid down by the Hon'ble Supreme Court in ***State & Another Vs. NMT Joy Immaculate***, reported in ***(2004) 5 SCC 729***, specially paragraph 13 thereof reads as under-

“13. Section 167 CrPC empowers a judicial magistrate to authorize the detention to an accused in the custody of police. Section 209 CrPC confers power upon a magistrate to remand an accused to custody until the case has been committed to the court of session and also until the conclusion of the trial. Section 309 CrPC confers power upon a court to remand an accused to custody after taking cognizance of an offence or during commencement of trial when it

finds it necessary to adjourn the enquiry or trial. The order of remand has no bearing on the proceedings of the trial itself nor can it have any effect on the ultimate decision of the case. If an order of remand is found to be illegal, it cannot result in acquittal of the accused or in termination of proceedings. A remand order cannot affect the progress of the trial or its decision any manner. Therefore, applying the test laid down in Madhu Limaye Case it cannot be categorized even as an 'intermediate order'. The order is, therefore, a pure and simple interlocutory order and in view of the bar created by sub section (2) of Section 397 CrPC, a revision against the said order is not maintainable. The High Court, therefore, erred in entering the revision against the order dated 06.11.2001 of the Metropolitan Magistrate granting police custody of the accused Joy Immaculate for one day."

18. From the aforesaid paragraph, it is clear that there is vast difference between the grant of remand and rejection of the remand. The entire decision of the Hon'ble Supreme Court in **NMT Joy Immaculate (Supra)** was for grant of remand, which was held as an interlocutory order and not revisable. If the remand is rejected and the remand of the accused is not given to the accused, it adversely affects the right of the prosecution of carrying out investigation. Right to carry out investigation and by which method, is exclusive powers of the State. Custodial interrogation is one of the well known methods of investigation and therefore, when the remand is not granted, it affects vitally and adversely the investigation but if the same is granted, then as per paragraph 13 of the aforesaid judgment, even if the remand is granted illegally, it does not affect

finality of the case and therefore, grant of remand is interlocutory order. But converse is not true and therefore, revision application preferred by the informant/respondent No. 2 against the order dated 16.05.2024 passed by the learned CJM, Aizawl before the Session Judge, Aizawl was tenable at law under Section 397 of the CrPC.

19. Looking to the facts and circumstances of the case, the investigation carried out so far by the prosecution, that involvement of the present accused petitioner which is prima facie revealed by the statement of the witnesses and the document collected so far by the prosecution. Keeping in mind the reasons for getting police custody of the present accused petitioner, the impugned order passed by the learned CJM, Aizawl granting remand of the petitioner for three days police custody is just, legal and proper and in consonance with the facts and law.

20. In view of the above, there is no substance in the present criminal petition and hence, the same is dismissed. The stay granted by this Court dated 11.06.2024 is hereby vacated.

The criminal petition is disposed of accordingly.

JUDGE

Comparing Assistant