

GAHC030004142024



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

Case No. : CrI.Pet./15/2024

Madhurijya Sarmah
Salem Veng
Mualpui
Aizawl

VERSUS

The State of Mizoram
Aizawl

Advocate for the Petitioner : Mr. Jordan Rohmingthanga
Advocate for the Respondent : P.P./Addl.PP
Mizoram

Linked Case : I.A.(CrI.)/30/2024

Mahindra and Mahindra Financial Services Ltd. through Chanpreet Singh
TBL, Bhavan, Khatla, Aizawl

VERSUS

The State of Mizoram and Anr.
Aizawl2:Madhurjya Sarma

Advocate for the Petitioner : Mr. Lalfakawma
Advocate for the Respondent : P.P./Addl.PP, Mizoram for R1

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
JUDGMENT & ORDER**

Date : 06-08-2024

Heard Mr. A.K. Das, learned Senior Counsel, assisted by Mr. J. Rohmingthanga, learned counsel for the petitioner. Also heard Ms. Linda L Fambawl, learned Public Prosecutor, for the state respondent. Also heard Mr. M. Singh, learned Senior Counsel assisted by Mr. R. Mishra, learned counsel for the first informant. It is to be noted here that the first informant i.e. Mahindra and Mahindra Financial Services Ltd., (MMFSL), represented by Chanpreet Singh, has filed one interlocutory application under Section 301 Cr.P.C. in Criminal Petition No.15/2024, for allowing to assist the Public Prosecutor and to file objection in the petition. And after hearing both side, the first informant was allowed to assist the Public Prosecutor and to participate in the hearing on the said without however allowing it to file written objection.

2. In this petition, under Section 482 of the Code of Criminal Procedure, the petitioner, namely, Dr. Madhurjya Sarma, has prayed for partially set aside/modify the order dated 13.06.2024, by reducing the bail bond amount of Rs.45 lakhs, imposed by the court of learned Addl. Sessions Judge-I, Aizawl in Bail Application No. 676/2024, arising out of Crime and Economic Offence P.S. Case No. 03/2024, under Sections 408/419/466/467/468/470/471/477A/120B IPC. It is to be noted here that vide impugned order dated 13.06.2024, the learned Addl. Sessions Judge, Aizawl had granted bail to the petitioner, who was arrested in the aforesaid case, on furnishing bail bond of Rs.45,00,000/- with two sureties of like amount.

3. The background facts, leading to filing of the present petition, is adumbrated herein below:-

“One Chanpreet Singh, Business Head, Mahindra and Mahindra Financial Services Ltd. (MMFSL) lodged one FIR with the Officer-In-Charge, Crime and Economic Police Station, Aizwal, Mizoram alleging inter-alia amongst others that during routine verification, they have come across a large scale fraud committed by their Area Business Manager Mr. Jakir Habibur Hussain in sanctioning many vehicles loans at their Aizawl Branch. Then on broader scrutiny of the records they have found Jakir Habibur Hussain and his co-conspirator H. Lalthankima and Edenthara had impersonated the official identity of the informant and had created a fake entity i.e. Mahindra Finance Limited with similar description of his company and executed fraudulent transactions, including cash in crores through fake entity set up through his co-conspirator. In order to open the said account the accused persons have forged company seal, PAN number, represented themselves as authorized person of MMFSL with the common object to gain undue advantage and defraud the MMFSL and public at large. Account statement of the fake account reveals that there was transaction of more than Rs. 80 Crores in the said account within a short span of nearly 3 years.

Upon the said FIR the Officer-In-Charge Crime and Economic Offence P.S. had registered a case, being Case No. 03/2024, under Sections 408/419/466/467/468/470/471/ 477A/120B

IPC and carried out investigation. Then on completion of investigation, the I.O. had arrested accused Jakir Habibur Hussain and others including the present petitioner who were arrested in the said case and forwarded them to the court. Then after competition investigation, the I.O. had laid charge sheet against the accused persons to stand trial in the court under the said sections of law on 25.06.2024.

The petitioner, namely, Dr. Madhurjya Sarma, during the course of investigation, was granted bail by the court of learned Additional Sessions Judge, Aizawl vide impugned order dated 13.06.2024, on furnishing bail bond of Rs.45,00,000/- with two sureties."

4. Being highly aggrieved, the petitioner has approached this court by filing the present petition for partially setting aside/modify the order dated 13.06.2024, by reducing the bail bond amount of Rs.45 lakhs imposed by the court of learned Addl. Sessions Judge, Aizawl in Bail Application No. 676/2024, on the following grounds:-

- (i) That, the bail bond amount, so imposed by learned Court is highly excessive and onerous and it defeats the meaning of bail;
- (ii) That, as held in the case of **Sandeep Jain vs. National Capital Territory of Delhi**, reported in **(2002) 2 SCC 66**, the condition of bail cannot be so onerous that their existence

itself tantamount to refusal of bail;

- (iii) That, the condition so imposed is nothing but a restriction on the right to life guaranteed in Article 21 of the Constitution of India and denial of justice as the condition is oppressive and unreasonable;
- (iv) That, the bank account of the petitioner was freezed by the investigating agency since his arrest and he is not in position to furnish/satisfy bail bond of such an excessive amount;
- (v) That, the petitioner is a permanent resident of Aizawl and as such the learned court ought not to have put such an onerous condition;
- (vi) That, in case of another co-accused, namely Paul Zothonpuria, bail was granted by Judicial Magistrate 1st Class, Aizawl vide order dated 07.06.2024 and the bail amount was Rs.2,00,000/ only;
- (vii) That, the petitioner is suffering from ailment of heart and undergoing treatment;

5. Mr. A.K. Das, the learned Senior Counsel for the petitioner has re-iterated the grounds mentioned herein above. Besides, Mr. Das submits that the bail bond amount, so imposed by learned Court is highly excessive and onerous and practically it tantamount to refusal of bail and it affects the right guaranteed under Article 21 of the Constitution of India and denial of justice, being the condition, so imposed by the learned court is oppressive and unreasonable. Therefore, Mr. Das has contended to allow the petition by

modifying the said condition.

6. Per contra, Ms. Linda L. Fambowl, the learned P.P. has opposed the petition. Ms. Fambowl submits that the petitioner hails from Assam and as such imposing such a condition cannot be said to be unjustified as his presence has to be secured during trial.

7. On the other hand, Mr. M. Singh, learned Senior Counsel has supported the condition so imposed by the learned Court. Mr. Singh submits that the petitioner is not a local resident of Aizawl as he is from Assam and such a bail condition is rightly imposed by the learned court. Mr. Singh further submits that the amounts, so defrauded by the petitioner from the MMFSL is very high and it amounts to several crores of rupees and on that count also the condition is not excessive, rather it is commensurate with the amount defrauded. Therefore, it is contended to dismiss the petition.

8. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record. Also, perused the impugned order dated 13.06.2024.

9. That perusal of the impugned order dated 13.06.2024, reveals that while granting bail to the petitioner the learned trial court had imposed a condition that he shall execute a bond of Rs.45,00,000/- with two sureties of like amount.

10. While dealing with the imposition of bail condition, Hon'ble Supreme Court in the case of **Sumit Mehta v. State (NCT of Delhi), (2013) 15 SCC 570:-**

14. Thus, in the case on hand, fixed deposit of Rs

1,00,00,000 for a period of six months in the name of the complainant and to keep the FDR with the investigating officer as a condition precedent for grant of anticipatory bail is evidently onerous and unreasonable. It must be remembered that the court has not even come to the conclusion whether the allegations made are true or not which can only be ascertained after completion of trial. Certainly, in no words are we suggesting that the power to impose a condition of this nature is totally excluded, even in cases of cheating, electricity pilferage, white-collar crimes or chit fund scams, etc.

15. The words "any condition" used in the provision should not be regarded as conferring absolute power on a court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail. We are of the view that the present facts and circumstances of the case do not warrant such extreme condition to be imposed.

16. In the light of the above discussion, while retaining the order granting anticipatory bail in

favour of the appellant-accused, namely, Sumit Mehta, we set aside the direction relating to deposit of FDR in the name of the complainant.

Xxxxxx"

11. Again in the case of **Sandeep Jain v. National Capital Territory of Delhi, (2000) 2 SCC 66**, Hon'ble Supreme Court has held as under:-

"4. We are unable to appreciate even the first order passed by the Metropolitan Magistrate imposing the onerous condition that an accused at the FIR stage should pay a huge sum of Rs 2 lakhs to be set at liberty. If he had paid it is a different matter. But the fact that he was not able to pay that amount and in default thereof he is to languish in jail for more than 10 months now, is sufficient indication that he was unable to make up the amount. Can he be detained in custody endlessly for his inability to pay the amount in the range of Rs 2 lakhs? If the cheques issued by his surety were dishonoured, the Court could perhaps have taken it as a ground to suggest to the payee of the cheques to resort to the legal remedies provided by law. Similarly if the Court was dissatisfied with the conduct of the surety as for his failure to raise funds for honouring the cheques issued by him, the Court could have

directed the appellant to substitute him with another surety. But to keep him in prison for such a long period, that too in a case where bail would normally be granted for the offences alleged, is not only hard but improper. It must be remembered that the Court has not even come to the conclusion that the allegations made in the FIR are true. That can be decided only when the trial concludes, if the case is charge sheeted by the police.”

12. Thus, the proposition of law, which can be crystallized from the cases discussed herein above, is that the courts while granting bail, ought not to impose onerous and excessive condition. Else, it would tantamounts to refusal of bail and it affects the right guaranteed under Article 21 of the Constitution of India and it also amounts to denial of justice. The words “any condition” used in the provision should not be regarded as conferring absolute power on a court of law to impose any condition that it chooses to impose and the word any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail.

13. Now, advertent to the facts herein this case, I find that besides imposing as many as five conditions while granting bail to the present petitioner, the learned court below had imposed another condition that the petitioner has to execute a bond of Rs.45,00,000/ with two sureties of like amount. The amount appears to be very excessive and high. Thus, having tested this

condition on the touchstone of the proposition of law discussed herein above, this court is of the considered view that the same is highly excessive and onerous also. And it amount to practically denial of bail, while the bank account of the petitioner had already been freezed by the investigating agency during investigation. And it affects fundamental right of the petitioner guaranteed under Article 21 of the Constitution of India. That, being so, allowing to stand such a condition, would cause grave injustice to the petitioner. There is no proposition of law that bail amount should be proportional to the amount defrauded or misappropriated. The submission of Mr. Singh, learned Senior counsel for the first informant, therefore, left this Court unimpressed.

14. In the result, this court finds sufficient merit in this petition. And accordingly, the same stands allowed. In the given facts and circumstances on the record, the condition of executing a bond of Rs.45,00,000/-, stands modified to Rs.2,00,000/-. Now, the petitioner has to execute bail bond of Rs.2,00,000/-, with two sureties of like amount. However, the remaining conditions would remain the same.

15. In terms of above this petition stands disposed of. The parties have to bear their own costs.

JUDGE

Comparing Assistant