

THE HIGH COURT OF TRIPURA
AGARTALA

A.B. 03 OF 2015

Sri Gautam Debnath,
S/O. Milan Debnath,
Resident of 40, Vidyasagar Palli,
Abhoynagar, Agartala,
P.S.-East Agartala,
District-West Tripura.

..... **Accused Petitioner.**

- V e r s u s -

The State of Tripura.

..... **Respondent.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the petitioner : Mr. A.K. Banerji, Advocate.

For the respondent : Mr. R.C. Debnath,
Addl. Public Prosecutor.

Date of hearing & judgment : 21.01.2015.

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

This petition for grant of anticipatory bail has been filed in respect of FIR No.156 of 2014 lodged on 12-09-2014 at the instance of the police itself against the petitioner, his brother and some other persons alleging that they had prepared to commit a dacoity and that some illicit arms were recovered from the house of the present petitioner. The police approached the Executive Magistrate who issued a search warrant in terms of section 94 of the Code of Criminal Procedure (Cr.P.C.). Thereafter, the police went to the house of the present petitioner. According to the

prosecution case, most of the persons managed to run away but one Uttam Debnath, real brother of the petitioner, was arrested in the house. When the search of the house was conducted, one unloaded single barrel gun and some ammunition were recovered hidden in a bag in the kitchen behind the firewood.

2. Accused Uttam Debnath has been released on bail. The others have also been released on bail and it is urged that Gautam Debnath, the present petitioner, should be granted anticipatory bail and released in the event of his arrest.

3. I am not in agreement with the submission made by the learned counsel because according to the police, it is Gautam Debnath who is the kingpin and the mastermind behind this entire attempted dacoity. This Court at this stage is not deciding the merits of the case but according to the prosecution, the illicit arms were recovered from the house of Gautam Debnath. No doubt, Uttam Debnath was also an occupant of the house and he was arrested but as per the record of the prosecution, during interrogation Uttam Debnath has stated that his brother Gautam Debnath had hidden the arms and ammunition in the kitchen room.

4. It has been urged on behalf of the petitioner that the arms were not seized and sealed at the spot. This is a matter to be looked into at the time of trial and at the time of grant of bail, this Court cannot go into the merits of the case one way or the other.

5. Therefore, I feel that custodial interrogation of the accused may be necessary in the facts of such case and, therefore, prayer for grant of anticipatory bail is rejected.

6. Before parting with this case, I am constrained to observe that the manner in which the Executive Magistrate issued warrants under section 94 of Cr.P.C. is not at all proper. The search warrant issued under section 94, signed by Sri M.L. Das, Sub-Divisional Magistrate, Sadar, reads as follows:-

“GOVERNMENT OF TRIPURA
OFFICE OF THE SUB-DIVISIONAL MAGISTRATE
SADAR SUB-DIVISION : WEST TRIPURA
(JUDICIAL SECTION)

No.F.8(4)/SDM/SDR/JDL/EM/2014/365-69 Dated:11/9/2014

SEARCH WARRANT U/S “94 of Cr.P.C.”

In view of the confidential report received from the Officer-Charge, East Agartala P.S. vide No.21074 dated 11/9/2014, a group of people who will assemble today mid night at the house of Goutam Debnath, S/O-Milan Debnath of Bidhyasagar Colony near Hindi School with intention and preparation for dacoity. They have possessed one fire arms in that location, therefore, the Officer-in-Charge, East Agartala P.S. is hereby directed to conduct a search raid on 11.09.2014 in the house of Sri Goutam Debnath S/O-Milan Debnath of Bidhyasagar Colony near Hindi School, Agartala by today under the provision of Section 94(1) of Code of Criminal Procedure, 1973.

During conducting the said raid under the search warrant specified above, Sri Takshiray Debbarma, Deputy Collector & Magistrate (Executive Magistrate), attached to this office will discharge his duty as Executive Magistrate and he may take appropriate course of action depending upon the

evolving situation with intimation to the undersigned. In this regard, the Officer-in-Charge of East Agartala P.S. may maintain communication with the Executive Magistrate as and when required.

*Sd/- (M.L. Das)
Sub-Divisional Magistrate
Sadar : West Tripura.”*

7. Therefore, even according to the averments made in the search warrant, it was alleged that a group of persons would assemble at midnight in the house of Gautam Debnath, S/O. Milan Debnath and they may be in the possession of fire arms and are preparing to commit the offence of dacoity. Based on these facts, the Executive Magistrate issued a search warrant as above.

8. Warrants for production or search of documents can be issued under Chapter VII of the Cr.P.C. Search warrants can be issued by a Court under section 93 of Cr.P.C. The District Magistrate, Sub-Divisional Magistrate or Magistrate of the First Class also have the power to issue warrant under section 94 but this is a very limited power. Section 94 of the Cr.P.C. reads as follows:-

“94. Search of place suspected to contain stolen property, forged documents, etc.—(1) If a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property, or for the deposit, sale or production of any objectionable article to which this section applies, or that any such objectionable article is deposited in any place, he may by warrant

authorise any police officer above the rank of a constable—

(a) to enter, with such assistance as may be required, such place,

(b) to search the same in the manner specified in the warrant,

(c) to take possession of any property or article therein found which he reasonably suspects to be stolen property or objectionable article to which this section applies,

(d) to convey such property or article before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose of it in some place of safety,

(e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or production of any such property or article knowing or having reasonable cause to suspect it to be stolen property or, as the case may be, objectionable article to which this section applies

(2) The objectionable articles to which this section applies are—

(a) counterfeit coin;

(b) pieces of metal made in contravention of the Metal Tokens Act, 1889 (1 of 1889), or brought into India in contravention of any notification for the time being in force under section 11 of the Customs Act, 1962 (52 of 1962);

(c) counterfeit currency note; counterfeit stamps;

(d) forged documents;

(e) false seals;

(f) obscene objects referred to in section 292 of the Indian Penal Code (45 of 1860);

(g) instruments or materials used for the production of any of the articles mentioned in clauses (a) to (f)."

9. Therefore, this power can be exercised by the Magistrate only if he has reason to believe that the place, the search of which is to be conducted, is used for the deposit or sale of stolen property, or for the deposit, sale or production of any objectionable article to which this section applies.

10. Sub-section (2) of section 94 defines objectionable articles for the purposes of the said section and these articles are counterfeit coins; pieces of metal made in contravention of the Metal Tokens Act, or imported into India in contravention of the Customs Act; counterfeit currency notes; counterfeit stamps; forged documents; false seals; obscene objects within the meaning of section 292 of the Indian Penal Code; and instruments or materials which can be used for the production of any of the objectionable articles. The powers under section 94 can only be exercised when the articles in question are either stolen property or objectionable articles as defined in sub-section (2).

11. Therefore, in the present case, the Sub-Divisional Magistrate did not have the power to issue search warrant because it was not a search warrant under section 94 but a search warrant under section 93 which he was issuing. The power to issue a search warrant under section 93 only lies with the Court and not with the Executive Magistrate. However, while granting bail or not, I have

not taken into consideration this fact because whether the search is proper or improper is for the Court to decide at the time of final hearing. Any observation made herein has been made only for the purposes of deciding the bail application and not on the merits of the case.

12. A copy of this order shall be sent to the Chief Secretary to the Government of Tripura, who shall ensure that all Executive Magistrates in the State are informed about this order so that they know what are the limits of their power.

CHIEF JUSTICE