

Party Name : MITHUN NAYEK @ SARAJIT NAYEK Vs THE STATE OF TRIPURA

---

HONBLE THE CHIEF JUSTICE DEEPAK GUPTA

---

This is an application for grant of anticipatory bail in respect of Sidhai P.S. Case No. 51/2014 under Sections 457, 354(B), 325 and 506 IPC.

One of the contentions raised in the bail application is that the Assistant Sub-Inspector of Police was not authorized to investigate the matter. For this reason, the case has been adjourned time and again.

I see no reason why the question as to whether the Investigating Officer is actually empowered or not to investigate the matter is such a serious issue to be dealt with in a bail application.

The accused will be free to raise this issue during the course of trial, but at the stage of grant of bail, the factors which have to be considered are

2. The nature of the offence;
3. The fact whether the accused is likely to flee from justice;
4. Whether the accused is likely to interfere with the investigation or will try to influence the witnesses.

Other factors are not necessary to be considered unless they go to the root of the matter. Whether it is 'A' officer or 'B' officer who has the power to investigate is something which need not be considered at the time of grant or refusal of bail.

To give an example, suppose this was a case where the victim had stated that she had been raped by the accused. Would this Court grant bail only because the investigation is being carried out by a person not authorized to investigate the matter?

In my opinion that would not be a ground to grant bail especially, anticipatory bail. As far as the present case is concerned, the petitioner was granted ad-interim bail on 23.07.2014 and has been on bail ever since then. Therefore, it would not be just and proper to undo the bail already granted to him.

However, keeping in view the nature of the offences and the charges made against the petitioner, the bail order dated 23.07.2014 is confirmed subject to the following conditions:-

- i) That petitioner shall appear before the Investigating Officer at 11.00 a.m. on Friday (09.01.2015). He shall also appear before the Investigating Officer on every subsequent date for which a written notice is served upon him;
- ii) The petitioner is further directed not to tamper with or in any manner influence the prosecution witnesses;
- iii) The petitioner is further directed not to in any manner try to influence any of the prosecution witnesses;
- iv) The petitioner is further directed not to cause any hindrance in the investigation.
- v) The petitioner shall not leave Tripura without permission of the appropriate Court;
- vi) In case, the petitioners violate any of the conditions or try to delay the trial the prosecution shall be at liberty to apply for cancellation of bail.

The privilege of the anticipatory bail shall be available to the petitioner till charge sheet is filed where after he shall have to apply for regular bail before the appropriate Court.

On the petitioner filing application for supply of the copy on payment of appropriate fees, the copy of the same shall be supplied to the petitioner during the course of the day today.