IN THE HIGH COURT OF MANIPUR

AT IMPHAL

BAIL APPLICATION NO. 07 of 2020

Shri Shaikhom Mantri Meitei, aged about 57 years, S/o (L) S. Lomon Meitei, resident of Heirok Part-I, P.O Wanjing & P.S Heirok, Thoubal District, Manipur-795148.

… Petitioner

-Versus -

The Officer in Charge, Heirok Police Station having its office at Heirok Police Station, P.O Wanjing & P.S Heirok, Thoubal District, Manipur-795148.

… Respondent

B E F O R E

HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the Applicant/ petitioner	::	Shri N. Jotendro, Sr.Advocate.
For the respondent	::	Shri Samarjit H., Addl. GA.
Date of Hearing	::	31-08-2020
Date of Judgment & Order	::	**10-09-2020**

JUDGMENT & ORDER

[1] Heard Shri. N. Jotendro, learned senior Advocate appearing for the petitioner/ accused and Shri Samajit Hawaibam, learned Addl. Government Advocate appearing for the respondent.

[2] By the instant application, the petitioner/ accused has prayed for releasing him on bail in connection with the case under FIR No. 17(5)2020 u/s 120B/471/420/34 IPC Heirok P.S considering his health condition.

[3.1] The case of the police as narrated in the order dated 09-06-2020 of the Chief Judicial Magistrate, Thoubal is that on 06-05-2020 at 8 pm, one complainant, Shri Laishram Khamba Singh who is the Pradhan of the Heirok Part-I Gram Panchayat, lodged a written report stating that as per complaints made to him by the job card holders of MGNREGA, it is learnt that the petitioner/ accused has fraudulently withdrawn amounts from different accounts opened in the HDFC Bank, Thoubal Branch on 06-05-2020 in connivance with his associates.

[3.2] A case under FIR No.17(5)2020 u/s 120B/471/420/34 IPC Heirok PS was registered and the investigation was commenced accordingly. During the course of investigation, the complainant was examined and he fully corroborated the facts as contained in his complaint. The petitioner/ accused was also examined and he stated that he had withdrawn the money from different accounts of the job card holders. From his disclosure, five ATM cards, thirty-four cheque books and Rs.1,00,000/- in cash were recovered and seized from his residence by observing the formalities. On re-examination of the complainant, thirteen number of cheque leaves of different card holders of the HDFC Bank, Thoubal Branch were seized on production by the complainant by observing the formalities. During the course of the investigation, the Manager of the HDFC Bank, Thoubal Branch, Shri Arunkumar Singh Okram was examined and he stated that on 06-05-2020 at about 10 am, the petitioner/ accused came to the bank and withdrew a sum of

Rs.49,000/- from different accounts by way of thirteen bearer cheque leaves with the submission of his ADHAR card as identifying the documents. The xerox copies of the thirteen cheque leaves, transaction statements and the ADHAR cards of the petitioner/ accused were seized by observing the formalities. While checking the seized cheque books, it is found that the numbers of the missing cheque leaves are the same with that of the cheque leaves used by the petitioner/ accused for withdrawal of the said amounts.

[3.3] During the course of the investigation, the account holders of the HFDC Bank, Thoubal Branch were examined and their statements were recorded by the police. Many of them stated that they had no idea about the opening of their bank accounts and they did not have the relevant documents like passbook, cheque book, ATMs etc. with them and they never signed on any of the cheque leaves or withdrawal forms of the bank for withdrawal of money. However, one of the account holders namely Ningthoujam (O) Pramodini Devi stated that in the beginning of the current month, she had signed on the cheque leaf for withdrawal of money of job card holders from her account as requested by the petitioner/ accused.

[3.4] An application being Cril. Misc. (B) Case No.131 of 2020 was filed by the petitioner/ accused before the Chief Judicial Magistrate, Thoubal for grant of bail on the inter-alia grounds that he is innocent; that he has been falsely implicated in the case; that no incriminating articles were seized/ recovered from his possession; that he has been suffering from heart ailments

since 2009, for which he had been treated at Escorts Heart Institutes, New Delhi and is required to be taken to the hospital quite often and that his continuing stay in the jail will deteriorate his health. On the other hand, the case of the police was that the petitioner /accused had withdrawn money from different accounts of the job card holders and from his possession, five ATMs, thirty-four cheque books and Rs.100000/- were seized. From the examination of the Bank Manager, it is revealed that the petitioner/ accused had withdrawn Rs.49,000/- from different accounts of the card holders by way of thirteen cheque leaves with the submission of his ADHAR card. Therefore, there exists prima facie material to show that the petitioner/ accused had forged the signatures of the account holders and withdrawn money by using forged cheques as genuine. As per the medical examination report submitted by the Special State Medical Board, the petitioner / accused was not suffering from any life threatening ailments and was advised to continue the same medication and treatment at JNIMS.

[3.5] Accepting the submissions made by the learned APP and on perusal of the materials on record, the learned Chief Judicial Magistrate, Thoubal declined to grant bail to the petitioner/ accused vide its order dated 09-06-2020.

[3.6] A bail application being No.6 of 2020 was filed by the petitioner/ accused before this Court which was permitted to be withdrawn with a liberty

to move the learned Sessions Court vide order dated 15-06-2020 passed by this Court.

[3.7] An application being Cril. Misc. (B) Case No.51 of 2020 was, thereafter, filed by the petitioner/ accused before the Court of Sessions Judge, Thoubal for grant of bail. After having heard the learned counsel appearing for the petitioner/ accused and the Addl. PP and after having perused the materials placed on record, the learned Sessions Judge, Thoubal rejected the bail application and while rejecting it, the learned Sessions Judge had referred to various decisions of the Apex Court which held that the economic offences are of grave nature, being a class apart which arises out of deep-rooted conspiracies and effect of the community as a whole is to be kept in view.

[4] The instant application has been filed by the petitioner/ accused for his release on bail on the inter-alia grounds that he has been falsely implicated in the case. He has not been accused earlier of any criminal case. The case has been registered on the basis of the third party information. No incrimination articles have been seized from his possession or at his instance. Since he has been suffering from heart ailments, he used to get fainted several times in the jail campus. In view of the COVID-19 crisis, the JNIMS which has been declared as the hospital for COVID-19 pandemic, is not safe for treatment of the petitioner/ accused.

[5] The law as regards the grant of bail is well settled and the main requirement is that while considering the application for grant of bail, the Court ought to apply its judicious mind and to take into account the following factors in terms of the law laid down by the Hon'ble Supreme Court :

(a) The nature of accusation and the severity of punishment in case of conviction and nature of supporting evidence;

(b) Reasonable apprehension of tempering with the witness or apprehension of threat to the complainant;

(c) Prima facie satisfaction of the Court in support of the charge.

[6.1] The case under the said FIR was registered on the basis of the complaint lodged by Shri L. Khamba Singh stating that as per the complaints made by many job card holders, the petitioner /accused had fraudulently withdrawn amounts from different accounts opened at HDFC Bank, Thoubal Branch in connivance with his associates. It is nowhere stated in the complaint that the amount had been withdrawn from the accounts of the job card holders and moreover, the names of the job card holders who approached him, were also not mentioned therein. The case of the police is that when the Manager of the HDFC Bank, Thoubal Branch was examined, he stated that on 06-05-2020, a sum of Rs.49,000/- had been withdrawn by the petitioner/ accused from different accounts on the basis of thirteen bearer cheques. But the names of the account holders from whose accounts the said amount had been withdrawn, were not disclosed by him. On examination of the account holders, many of them stated that they did not

have any idea about the accounts being opened in the HDFC Bank, Thoubal Branch. Only one account holder stated that at the beginning of the current month, she signed on the cheque for withdrawal of money as requested by the petitioner/ accused. If the card holders did not open their accounts in the HFDC Bank, Thoubal Branch, the question of money being withdrawn fraudulently from their accounts by the petitioner/ accused would not prima facie and technically arise at all. Similar is the case with the allegation by the police that the petitioner/ accused forged the signature of the card holders and withdrew the money by using forged cheques. The question of forgery of the signature of the card holders for withdrawal of money will arise, only when the bank accounts are opened by them. Their stand is very clear that they have not opened any account in the HDFC Bank, Thoubal Branch.

[6.2] From the materials on record, it appears that some accounts have been opened in the HFDC Bank, Thoubal Branch in the names of some of the card holders and certain amounts have been wit]hdrawn therefrom. Therefore, the real issues or for that matter, the aspects which need to be investigated by the police appear to be as to who opened the said accounts and how were they opened in the HFDC Bank, Thoubal Branch. Were they opened by the petitioner/ accused and if yes, how was it done by him? As we all know, to open an account in a bank, one has to submit an application in a prescribed format along with supporting documents like ADHAR card, Driving Licence, Passport, Voter ID etc., in order to prove the identity and the

address of the applicant. After the formalities being completed as required by the bank, an account will be opened by the bank in the name of the applicant. No bank account can be opened by the bank in favour of anyone without any of the aforesaid documents being produced by him. How did the HFDC Bank allow opening of accounts in the names of the card holders without their knowledge? Were the accounts allowed by the HFDC Bank to be opened in the names of the card holders allegedly by the petitioner/ accused without verifying their identities and addresses. Were the copies of the said documents, belonging to the card holders, produced by the petitioner/ accused at the time of opening the said accounts? If the answer is in the affirmative, how did the bank accept them in the back of the card holders and without their knowledge? Were all the applications submitted by the petitioner/ accused by forging the signatures of the card holders? It will not be an easy task for a person to open many accounts in the names of a large number of persons without connivance with the staff of the bank. These are some of the questions for which the answers will have to be given by the bank, so as to prove the guilt of the petitioner/ accused. The police need to investigate exhaustively which is not forthcoming in the present case. As per the guidelines issued by the Government of India, it is said that the card holders are to be paid their remunerations/ wages through their accounts. If the card holders have not opened the said accounts in their names in the HFDC Bank, Thoubal Branch, the question is as to how they had been getting their remunerations/wages for the work done by them. Do they have

their accounts in other banks? Are they telling the truth or in collusion with the petitioner/ accused because none of them had lodged any complaint against the petitioner/ accused? In the instant case, the police appear to have failed to conduct investigation properly or place any material on record to answer prima facie any of the aforesaid issues or to deal with the aforesaid aspects. In other words, the police appear to have failed to collect any material to connect the petitioner/ accused with the alleged opening of the said accounts except the recovery of some ATM cards, cheque books, pass books, some cash etc. which will not prima facie prove that the petitioner/ accused has opened the said accounts by forging the signatures of the account holders. It is the bank which has opined these bank accounts and therefore, the materials can be collected from the HDFC Bank, Thoubal Branch. Were the documents like ADHAR card, Driving Licence, Passport, Voter ID etc. on the basis of which the accounts were opened by the HFDC Bank, Thoubal Branch, forged and who did it. The mere possession of the said documents by the petitioner/ accused will not per se constitute the offences of forgery and cheating except probably the violations of the provisions of the banking laws. The police need to investigate on these aspects and collect more materials to show prima facie case against the petitioner/ accused as alleged in the compliant but the police appear to have no interest thereon after the petitioner/ accused being arrested by them. On 21-08-2020 and 24-08-2020 when the bail application was listed before this Court for consideration, the respondent/ police was granted time to produce

materials in this regard but it did fail to do so. One more aspect which needs to be considered by this Court is that the petitioner/accused has been admittedly suffering from heart ailments and he had been once treated at Escorts Heart Institute, New Delhi. As seen from the order of the learned Chief Judicial Magistrate, Thoubal, the petitioner /accused appears to have been advised by the State Medical Board that he shall continue with the medication and treatment at JNIMS. It may be noted that after the JNIMS being declared as the hospital for treatment of COVID patients, there has been hue and cry in the public that non-COVID patients are not given facilities at JNIMS for treatment of their ailments. There is no material on record to show that the JNIMS has now started entertaining non-COVID patients suffering from such heart ailments. Moreover, the Hon'ble Supreme Court has observed in some of the cases that High Power Committee be constituted by the State Governments to see that the prisoners can be released on bail in respect of certain cases mentioned therein so as to de-congest the jails in wake of the COVID-19 crisis.

[7] In view of the above, the application is allowed with the direction that the petitioner/ accused be released on bail, if he is not required for any other case, subject to the following conditions:

(a) The petitioner/ accused shall furnish a personal bond for a sum of Rs.10000/- (Rupees ten thousand) only subject to the satisfaction of the learned CJM, Thoubal with a surety of the like amount;

(b) The petitioner/ accused shall not leave the State of Manipur without the leave of the court;

(c) The petitioner/ accused shall co-operate with the police in its further investigation in the instant case;

(d) The petitioner/ accused shall not do anything towards tempering with the witnesses or threatening them.

In the event of any of the conditions (b), (c) & (d) being violated by the petitioner/ accused, it is open to the respondent to move this court for modification of this order or passing any other appropriate order.

JUDGE

FR/ NFR

Devananda

Yumkham Rother Digitally signed by Yumkham Rother Date: 2020.09.10 11:35:29 +05'30'