Yumkham Rother
Digitally signed by Yumkham Rother
Date: 2020.12.01 15:55:32 +05'30'

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

AB No. 23 of 2020

KoijamBishwakumarSingh, aged about 41 years, s/o K. Ashakumar Singh, resident of PishumthongOinamLeikaiNongthombamLeirak, PO Imphal, PS Singjamei, Imphal West District, Manipur-795001.

....Petitioner

- Versus -

The Officer-in-charge, Women Police Station, Imphal West Dsitrict, Manipur, Pin-795004.

... Respondent

**B E F O R E
HON'BLE MR. JUSTICE MV MURALIDARAN**

For the petitioner ::MrN. Ibotombi, Sr. Adv, Mr. A.Rommel, Adv.

For the respondent.:: Mr. H. Samarjit, PP.
Date of hearing &
reserved. :: 1.10.2020.

Delivery of Judgment
& order :: 23.11.2020

**JUDGMENT & ORDER
(CAV)**

[1] This petition has been filed by the petitioner under Section 438 Cr.P.C. praying to grant anticipatory bail in connection with the FIR Case No.33(2)2020 on the file of Singjamei Police Station under

Section 307/325/354/34 IPC corresponding to FIR Case No.21(6)2020 on the file of the Women Police Station, Imphal West underSection 307/325/354/34 IPC later on added Section 376 IPC.

[2] The case of the prosecution is thaton 16.2.2020 at 4.40 P.M., the complainant lodged a report with Singjamei Police Station stating that the petitioner was known to her as friend and on 6.2.2020, he along with his mother borrowed a sum of Rs.2,50,000/-from her for his urgent needs with an assurance to repay the same on the next day. Accordingly, on 7.2.2020 at around 4.00 P.M., the complainant met the petitioner at Hao ground and requested him to repay her money, but instead of repaying the money, the petitioner strangled and threatened her by saying that he will kill her. With the help of passersby, thecomplainant escaped from him.

[3] Further case of the prosecution is that on 10.2.2020 at around1.00 P.M., the petitioner called the complainant through his mobile phone to meet him at YumnamLeikaiLairembi, whereby he gave an assurance that he will give her the money on 12.2.2020. Accordingly, on 12.2.2020 at around 7.30 A.M., the complainant went to his house and requested him and his family to repay the money, but the petitioner assaulted her by pulling her hair inside his room. At that time, the petitioner's mother and younger sister verbally assaulted her by using

filthy language. Again on 14.2.2020 at around 8.20 A.M., the complainant went to the house of the petitioner and requested his family members to repay the money and at that time also, the petitioner pelted a brick at her and hit at her back bone and also tried to kill her by smashing her head with a large stone, however, she managed to escape. In the course of occurrence, the mother of the petitioner shouted to close the gate, so that the complainant could not escape and the complainant saw the petitioner holding a long knife approaching her. She shouted for help and at that time, the father of the petitioner grabbed her arms and started punching her on her left cheek. In the meantime, the mother of the petitioner slapped her near the gate. In that incident, the complainant received injury and was evacuated to Urban Health Centre, Singjamei. It is also the case of the prosecution that before this incident, the petitioner took a sum of Rs.5 lakhs from her and he never repaid the same and assaulted her several times. On the basis of the statement of the complainant as well as medical examination, Section 376 IPC was added.

[4] The learned counsel for the petitioner submitted that the allegation made in the FIR are all false and concocted story and the same has been made only for the purpose of giving harassment to the petitioner and in fact, the FIR has been registered without any verification. He would

submit that there is no material on record to show that the petitioner has committed the alleged offences charged againsthim.

[5] The learned counsel then submitted that assuming but not conceding that the allegation made in the FIR is correct, no criminal offences punishable under the Indian Penal Code has been made out and the nature of the allegation made against the petitioner is of civil nature. Since the petitioner apprehends arrest by the police at any time and he will be subjected to unnecessary harassment, he has filed the instant petition for anticipatory bail. In Support, learned counsel cited the decision of the Hon'ble Supreme Court in the case of *BhadreshBipinbhaiSheth v. State of Gujarat and another, (2016) 1 SCC152.*

[6] Opposing the petition, the learned Public Prosecutor submitted that the petitioner borrowed a sum of Rs.2,50,000/- from the victim and when the victim asked the petitioner to repay the money, the petitioner assaulted her physically by strangling and also threatening her life. He would submit that the statement of the independent witnesses of the said incident reveals that three accused persons assaulted the victim woman in their house. The local residents took the victim woman to the Urban Health Centre, Singjameiand later took her to Singjamei Police Station and suggested her to take up the case about the incident at Singjamei Police Station.

[7] The learned Public Prosecutor further submitted that in another instance, the petitioner had borrowed a sum of Rs.5 lakhs from the victim and had never repaid back. When the victim asked to repay the money, the petitioner assaulted her several times.

[8] The learned Public Prosecutor then submitted that during the course of investigation, it was learnt that the victim was also sexually assaulted by the petitioner. Therefore, Section 376 IPC was added by thepolice. He further submitted that since Singjamei Police Station has no lady officer to investigate sexual assault cases, the case was transferred to Women Police Station, Imphal West by the order of the Superintendent of Police. The Women Police Station took the matter and the investigation is going on. The learned Public Prosecutor submits that since the investigation is on, the custodial interrogation of the petitioner is necessary and thus, prayed for dismissal of the petition.

[9] This Court considered the submissions of the learned counsel for the petitioner and the learned Public Prosecutor and also perused the materials available on record.

[10] The grievance of the petitioner is that he has been falsely implicated in the case and he has not committed any offence as alleged

by the complainant. Only with an ill-motive, the complainant has lodged the complaint and harassing him and his family members.

[11] It is to be noted that earlier, the petitioner approached the learned Sessions Judge, Imphal West along with his father and filed a Criminal Miscellaneous (AB) Case No.20 of 2020 seeking anticipatory bail. It is seen that by an order dated 18.2.2020, the learned Sessions Judge, granted interim bail to the petitioner and his father. After an enquiry, bythe order dated 25.6.2020, the learned Sessions Judge, cancelled theanticipatory bail granted to the petitioner and made absolute theanticipatory bail to the petitioner's father.

[12] At this juncture, the learned counsel for the petitioner submitted that the petitioner is fully co-operating the investigation of the Case by attending the police station as and when the police called and therefore, no custodial interrogation is required. Further, the complainant has not mentioned anything about the sexual assault at the time of filing the FIR before the Singjamei Police Station and the alleged rape is an afterthought only to harass the petitioner.

[13] On the other hand, the prosecution version is to the effect that the Investigating Officer of the case had visited the spot and recorded statements of the victim both undersection 164 and 161 Cr.P.C. and the

said statements reveal that the victim was raped by the petitioner in March, 2017 around Holy festival at Hotel Lanchenba, Imphal on the pretext of giving back her money and by assuming that they would elope and get married afterwards. However, the accused person kept making excuses and avoided eloping with her, but vehemently giving her a false belief that they would marry later. Later the petitioner forced thecomplainant to abort the child by giving her some pills. The petitioneravoided marrying the complainant during 3-4 years of their relationship,but he married another woman in March-April, 2020, just a few weeksafter the incident.

[14] In the instant case, the alleged offences committed by the petitioner are (i) attempt to murder; (ii) outraging the modesty of a woman, (iii) Causing hurt with common intention and cheating and (iv) sexual assault.

[15] The grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case, ***in Bhadresh BipinbhaiSheth*** (supra), the Hon'ble Supreme Court held as under: "25.10. We shall also reproduce para 112 of the judgment in **SiddharamSatlingappa**case, (2011) 1 SCC 694, wherein the Court delineated the following factors and Parameters that need to be taken into consideration while dealing with anticipatory bail:

(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended -before arrest is Made;

(b) The antecedents of the applicant includingthe fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence,

(*c) The possibility of the applicant to flee from Justice;*
(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern;

(h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
(j) Frivolity in prosecution should always be considered and it is only

the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to thegenuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

[16] In ***BhadreshBipoinbhaiSheth*** (supra), the Hon'ble Supreme Court observed that the discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In case where the Court is of the considered view that the accused hasjoined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event custodial interrogation should be avoided.

[17] In the instant case, the materials Produced before this Court would reveal that the investigation is going on and in such a situation, taking note of the allegations leveled against the petitioner, the custodial interrogation of the petitioner is prerequisite for free and fair investigation and for ends of justice as pleaded by the prosecution. Since the offence under Section 376 IPC was also added in the instant case and the investigation is ongoing, at this stage, if the petitioner is granted pre-arrest bail, there is every possibility that he might hamper the investigation. Based on the available materials and the facts of the instant case, this Court is of the view that granting anticipatory bail at the stage of ongoing investigation would not be appropriate. Further, the statements

as well as medical evidence prima facie supports the commission of offences by the petitioner and the learned Sessions Judge was right in cancelling the interim bail granted to the petitioner.

[18] For the foregoing discussions, this Court is of the view that the petitioner is not entitled to get anticipatory bail and accordingly, the anticipatory bail application is dismissed.

JUDGE

FR/NFR

John kom