Yumkham Rother
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IN THE HIGH COURT OF MANIPUR
AT IMPHAL
AB No.26 of 2020

Shri Ingudam Momocha Singh, aged about 32 years, S/O Ingudam Tolpishak Singh, resident of Seijang Mayai Leikai, PO Lamlong, PS Yaingangpokpi, Imphal East District, Manipur-795010, presently serving as Head Constable, 8th IR (GDO) Bn.

……. *Petitioner/s*

– Versus –

The Officer-in-Charge, Singjamei Police Station, PO & PS Singjamei, Imphal East District, Manipur-795008.

…. *Respondent/s*

BEFORE
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Applicant/Appellant : Mr. N. Zequeson, Adv.

For the Respondent/s : Mr. Y. Ashang, Ld. PP

Date of **hearing and**

Judgment & Order : 03.12.2020

JUDGMENT & ORDER
(ORAL)

The petitioner, who is an accused in the FIR No.62(5)2020 SJM PS U/s 21(c) ND&PS Act on the file of the Respondent Police, has approached this Court and filed this Anticipatory Bail under

section 438 of Code of Criminal Procedure, 1973 read with Section 37 of the NDPS Act, 1985 for granting anticipatory bail in the event of his arrest.

[2] The case of the petitioner is that that petitioner is serving as Head Constable of the 8th Indian Reserve (GDO) Battalion. He is an honest and hardworking police personnel presently attached with the CDO/IW unit. There is also no criminal record against him in any Police Station in Imphal.

[3] The further case of the petitioner is that the petitioner was informed by his sister that her son (the Petitioner's nephew), Mr. Thokchom Rishi Singh, S/o Shri Thokchom Noren Singh, who was in Delhi for attending coaching classes for competitive examinations, was having some problem with his landlord in connection with his rented room. Therefore, on the request of his sister, the Petitioner went to Delhi on 21.03.2020 to sort out the matter and to bring his nephew home. However, due to the lockdown imposed as a precautionary measure against the COVID-19 pandemic and corresponding travel restriction, they were not able to come back to Manipur.

[4] In the meantime, through newspaper report, he came to know that he was alleged to have been involved in the illegal trafficking of a contraband item “Spasmo Proxyvon”, commonly known as SP table/capsule.

[5] The petitioner further states that as per the prosecution, it was found that on 09.05.2020, 5(five) boxes of the said contraband were seized by the police authorities at Imphal Airport which were being airlifted in the cargo of Indigo flight 6E1937 from Delhi to Imphal via Kolkata. One, Mr. Sagolsem Vikash, age about 33 years, was apprehended along with the seized item and in connection thereof, FIR No.62(5) 2020 SJM PS U/S 21(c) ND&PS Act has been registered at Singjamei Police Station.

[6] Based on the record, that the apprehended person has accused the petitioner to be the owner of the seized contraband item.

[7] The petitioner further states that he is innocent and not at all committed any criminal activity as alleged by the respondent and all the allegations/accusations against him are false and baseless. However, on the basis of such false allegations/accusations, he has

been implicated in the aforesaid FIR No.62(5)2020 SJM PS U/S 21(c) ND&PS Act as an accused and investigation of the Case is going on.

[8] In the above circumstances, the petitioner has approached the Learned Special Court, ND&PS, Manipur by filing Cril.Misc.(Anticipatory Bail) Case No.1 of 2020 praying for grant of anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 read with Section 36C of the NDPS Act, 1985.

[9] In the above petition, the petitioner pleaded that he is completely in the dark and unaware of the allegations/accusations against him as no information has been provided to him or his family by the Police authorities despite the application submitted by his father to the OC, Singjamei Police Station, but the said anticipatory bail application was dismissed on 24.06.2020 by the Learned Special Judge, ND&PS, Manipur on the ground that the petitioner has been evading arrest even though he himself belongs to the disciplined police force of Manipur Police Department, he has not been co-operating with the investigation and therefore, that the custodial interrogation in highly required by the I.O. of the case and hence, the anticipatory bail application was dismissed.

[10] Mr. N. Zequeson, Ld. counsel for the petitioner further argued in this case that it is the settled proposition of law that without any supporting evidence/material and merely on the statement of a co-accused, a person is not at all liable to be arrested.

[11] For supporting the case, Mr. N. Zequeson, Ld. counsel for the petitioner submitted a judgment passed by the Hon'ble Supreme Court of India in *Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694*, held as follow:-

> *"112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:*
>
> *(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
>
> *(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;*
>
> *(iii) The possibility of the applicant to flee from justice;*
>
> *(iv) The possibility of the accused's likelihood to repeat similar or other offences;*

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) 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 overimplication in the cases is a matter of common knowledge and concern;

(viii) 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 the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) 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 the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.

116. Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case."

[12] Apart from this, Mr. N. Zequeson, Ld. counsel for the petitioner further submitted that as per Section 37 of the NDPS Act, the Court must be satisfied that there are reasonable grounds for believing that the petitioner is not guilty of such offence and that he is not likely to commit any offence while on bail.

[13] As per the above judgment rendered by the Hon'ble Supreme Court, the petitioner further submitted that there is no material on

record for showing that the petitioner is involved in the commission of the crime alleged in the FIR and neither he associated with the co-accused namely, Sagolsem Vikash nor an acquaintance of the said person except the allegation that the co-accused has given the statement that the contraband item belongs to this petitioner. There is no material to show that the petitioner is involved in this offence.

[14] Therefore, Mr. N. Zequeson, Ld. counsel for the petitioner prayed before this Court that considering the above nature of the case as well as the order passed by the Hon'ble Supreme Court in the above judgment, the petitioner may be granted anticipatory bail on the ground that there is no material to show his involvement in this case.

[15] Apart from this, he is a Police Officer working in the Manipur Police Department and he is ready to abide by any stringent condition/s imposed by this Court.

[16] I also heard Mr. Y. Ashang, Ld. PP.

[17] Though this case has been filed in the month of July, 2020, till date, no counter affidavit has been filed.

[18] Anyhow, Mr. Y. Ashang, Ld. PP seeks adjournment for filing counter affidavit but, if this Court considers the anticipatory bail application, he may be permitted to submit oral objection before this Court and accordingly, he was permitted to argue the case.

[19] Mr. Y. Ashang, Ld. PP submitted before this Court that it is the case registered under the ND&PS Act and as per under Section 37 of the NDPS Act, it is barred to grant anticipatory bail to this petitioner and there is enough material to implead this petitioner as an accused. Apart from this, the co-accused Mr. Sagolsem Vikash has strongly made a statement that this petitioner is the owner of the contraband item and on the instruction of this petitioner only, he is attempting to transport the contraband item through airline. Therefore, once, the co-accused has strongly implicated this petitioner as an accused in this case, the petitioner is not entitled for seeking any anticipatory bail since custodial interrogation is necessary to bring out the truth. Therefore, he is strongly objecting for granting anticipatory bail to this petitioner.

[20] Considering the both sides' arguments and the prosecution without filing any objection and produced any material to show this

petitioner's involvement in this case except the co-accused's statement that the petitioner is the owner of the contraband item.

[21] Therefore, though the petitioner is seeking anticipatory bail and the petition is pending from the month of July, 2020 and no counter affidavit has been filed.

[22] Apart from this, except the statement of the co-accused Mr. Sagolsem Vikash for the involvement of this petitioner, there is no allegation or materials against this petitioner at present but, granting of anticipatory bail, this Court ought to have considered the orders of the Hon'ble Supreme Court in the above judgment in *Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694* reported that the antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence and the applicant to flee from justice with the possibility of the accused's likelihood to repeat similar or other offences ought to be gone into.

[23] Apart from this, the prosecution has not produced any material before this Court for implicating this petitioner in this case at present. Since no counter affidavit has been filed and no material is

produced by the prosecution at this stage except the co-accused's statement and the petition is pending from the month of July, 2020, I am inclined to grant anticipatory bail to this petitioner with the condition that when the petitioner is working in the Manipur Police Department, definitely, he should co-operate with the investigation without interfering with the investigation of the respondent police in this case.

[24] In the above circumstances,

a) the anticipatory bail petition is allowed;

b) the petitioner is directed to be released on anticipatory bail by directing the petitioner to execute 2 sureties for a like sum of Rs.25,000/- (Rupees twenty five thousand) each to the satisfaction of the Learned Special Judge, NDPS, Manipur;

c) the petitioner is directed to report before the respondent police daily at 10:00 A.M. for 2(two) weeks without fail;

d) Thereafter, the petitioner is directed to appear before the respondent police as and when, required by the respondent police;

e) the petitioner is directed to co-operate with the investigation of the police;

f) the petitioner is directed not to tamper or hamper the investigation of the case by the respondent police;

g) if any condition is violated by the petitioner, the respondent police is at liberty to approach this Court for cancellation of the anticipatory of bail.

JUDGE

FR/NFR

-Larson