IN THE HIGH COURT OF MANIPUR
AT IMPHAL

A.B. No. 21 of 2017

Shri Okram Ibobi Singh, aged about 69 years, S/o. (Late) O. Angoubi Singh, a resident of Thoubal Athokpam Makha Leikai, P.O. & P.S. Thoubal, Thoubal, Manipur.

…….Petitioner.

-Versus-

Central Bureau of Investigation (CBI).

……. Respondent.

with
A.B. No. 22 of 2017

Shri Oinam Nabakishore Singh, IAS (Retd.), aged about 59 years S/o. O. Angoubi Singh of Babupara, Imphal West District, P.O. & P.S. Imphal, Manipur-795001.

…….Petitioner.

-Versus-

Central Bureau of Investigation (CBI).

……. Respondent.

with
A.B. No. 23 of 2017

Shri P.C. Lawmkunga, aged about 62 years, S/o. Late Khuacheuva, a resident of Mission Venthang House No. ½, P.O. Aizwal & P.S. Kulikawm, Aizawl, Mizoram.

…….Petitioner.

-Versus-

Central Bureau of Investigation (CBI).

……. Respondent.

With

A.B. No. 25 of 2017

Shri D.S. Poonia, aged about 65 years, S/o. (L) H.S. Poonia, a resident at A1/1003, Uniworld City, Sector-30, Gurugram-122001, Harayana.

…….Petitioner.

-Versus-

Central Bureau of Investigation (CBI).

……. Respondent.

with

A.B. No. 28 of 2017

Shri Yambem Ningthem Singh, aged about 62 years, S/o. (L) Y. Tombi Singh, a resident of Mantripukhri Lamlongei, Imphal East District, Manipur.

…….Petitioner.

-Versus-

Central Bureau of Investigation (CBI).

……. Respondent.

BEFORE

HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Petitioners :: Mr. Salman Khurshid,
Sr. Advocate,
Mr. N. Ibotombi, Sr. Advocate,
Mr. A. Rommel, Advocate in
AB No. 21 of 2017;

Mr. A. Romenkumar, Advocate
in AB No. 22 of 2017;

Mr. Th. Ibohal, Sr. Advocate
in AB No. 23 of 2017;

Mr. B.R. Sharma, Advocate
in AB No. 25 of 2017;

Mr. M. Gunedhor, Advocate
in AB No. 28 of 2017.

For the Respondents	::	Mr. W. Darakishwor, Sr. Panel Counsel
Date of Hearing & Judgment &Order	::	**27.02.2020.**

JUDGMENT AND ORDER
(ORAL)

These petitions have been filed by the petitioners seeking anticipatory bail in connection with the FIR No.244(9)2017 registered under Sections 420, 406, 120B of IPC read with Section 13(2) of the Prevention of Corruption Act, 1988.

2. The petitioners pray for passing an order to protect them from the apprehended arrest by directing their release on bail in the event of their arrest.

3. Brief facts as could be seen from the materials produced are as under:

Dr.Th.Munindro Singh, Joint Secretary (Planning), Government of Manipur lodged a complaint before the Officer-in-Charge, Imphal Police Station on 01.9.2017 for registering case against the petitioners viz., (1) Y.Ningthem Singh, former Project Director MDS (Petitioner in AB No.28 of 2017); (2) D.S.Poonia, IAS, then Chairman MDS (Petitioner in AB No.25 of 2017); (3) O.Ibobi Singh, the then Chairman of MDS (Petitioner in AB No.21

of 2017); (v) P.C.Lawmkunga, IAS, the then Chairman of MDS (Petitioner in AB No.23 of 2017) and (5) O.Nabakishore Singh, IAS, the then Chairman of MDS (Petitioner In AB No.22 of 2017 along with one S.Ranjit Singh, Administrative Officer, MDS alleging cheating, criminal conspiracy and breach of trust, thereby causing loss to the public exchequer.

4. In the complaint dated 1.9.2017, allegations against the petitioners have been stated as under:

> ***Petitioner in AB No. 21 of 2017:***
>
> *Being the Chairman of MDS from 1.7.2013 to 31.8.2014, Shri O. Ibobi Singh is required to be examined and also record his statement. The projects taken up during his Chairmanship and the transaction done by MDS for various project works of line departments during his tenure needs to be verified and study that no procedural lapses are found and that the prescribed procedures, established norms and extant Rules for implementation of various projects by MDS and other line department are scrupulously observed in public Interest.*

The Chairman of MDS by virtue of his post is the Joint account holder and Joint signatory. The Project Director, MDS alone is not competent to make any transaction, without the knowledge and consent of the Chairman, therefore it is assumed that the Chairman is bound to have knowledge of all transactions of MDS during his tenure of Chairmanship.

Petitioner in AB No. 22 of 2017:

Being the Chairman of MDS, during the period of 1.10.2015 and 6.7.2017, he is required to be examined and record his statement. The projects taken up by MDS during his Chairmanship needs m be studied. There may be instances where cheque are countersigned by him being the Chairman of MDS and only Project Director could not make any transaction without the consent of Chairman.

Petitioner in AB No. 23 of 2017:

Being a Chairman during the period of 1.3.2014 to 30.9.2015 and by virtue of his post, he is competent to know all the financial transactions, since he is the Joint signatory in all the payment made or done by

MDS. Shri P.C.Lawmkunga Is also required 170 be examined, and check if any procedural lapses, financial misappropriation, acts of omission and commission by the officials of MDS during his tenureship as Chairman had occupied or not in the course of Investigation.

Petitioner in AB No. 25 of 2017:

As Chief Secretary cum Chairman, MDS Order No.(A)/101/MDS.2009, dated 7th January, 2010 it is stated that "in view of the need to exercise control over expenditure, all cheques of the society shall be countersigned by the Chairman MDS".

Since lot of transactions for MDS have been found to be conducted during the tenure of his Chairmanship i.e. from 30.6.2009 to 30.6.2013, he is required to be examined and record his statement and to check the procedural lapses, if any and also to let him provide a room to the Commission for justification of the acts done by MDS during his Chairmanship and clear the Commission's doubt of misappropriating Government money/funds, if any.

Petitioner in AB No. 28 of 2017:

Being the Project Director of MDS during the said period under enquiry. All the documents and relevant papers including those Mbs, DPRs, Sanction Papers etc. which are not available for scrutiny at the moment at MDS Office needs to be requisitioned from him. His statement is very much required to be recorded for the justice of the case. The various bank accounts particularly saving accounts opened in the name of MDS and singly operated by him or with his staffs needs to be verified and investigated for the purpose of their (Bank accounts) needs and Intentions.

5. Based on the said allegations, the complaint has been lodged and the State police has registered the case In FIR No.244(9)2017 under Sections 420, 406, 120B IPC read with Section 13(2) of Prevention of Corruption Act, 1988 against the petitioners. Later on, the case has been transferred to the Central Bureau of Investigation

6. The petitioners have come up with these petitions contending that they have not committed any offence as alleged in the complaint and there is no material to support the complaint so

as to make them as accused. Thus, according to the petitioners, the complainant had made a false and fabricated case against them to gain political mileage of the present Government.

7. The Learned Senior Counsel for the petitioner contended that the petitioner In AB No.21 of 2017 is the Ex-Chief Minister of Manipur and presently the Opposition Leader of Manipur Legislative Assembly. The learned Senior Counsel further submitted that the complaint has been lodged with vested interest by the present Government to crush the political oppositions by making a false and fabricated case against the petitioner in AB No.21 of 2017.

8. As far as the other petitioners are concerned, the learned Senior Counsel argued that they have done their official work and the complaint has been lodged against them with cool calculation and deliberate design to humiliate and harass them by making false, fabricated and baseless allegations.

9. The learned Senior Counsel next submitted that Instead of making the petitioners as witnesses to the complaint, they have been falsely implicated in the case as accused only for the purpose of harassing them by getting the petitioners arrested.

10. Opposing the petitions, the learned counsel for the CBI submitted that in Manipur Development Society (MDS) during the period 2009-2010 to 2016-2017, total amount of Rs.518,69,65,323/- belonging to various departments of Manipur was deposited for execution of different works related to education, sports. tourism, health, tribal are development etc., out of the said amount, Rs.332,90,33,063/- was shown to have been utilized by MDS. However, the officials of MDS failed to produce documents regarding utilization of the remaining amount of Rs.184,42,11,478,56/-. He would submit that the said amount is alleged to have been misappropriated by the various Chairman/Project Directors of MDS authorities in collusion with other officials and private person viz., contractors etc. He would submit that the vigilance enquiry report had found serious irregularities in execution of works. Therefore, he is objecting for granting anticipatory bail to the petitioners.

11. It appears that after registration of the FIR basing on the alleged preliminary enquiry report dated 31.7.2017 of the Vigilance Department, the case has been taken over by the CBI on 20.11.2017. At the relevant periods mentioned in the complaint, the petitioners held the post of Chairman, Project Director and Administrative Officer respectively. A perusal of the report

submitted by the Vigilance Commission would indicate that the portions of the report had been more or less reproduced verbatim in the complaint dated 1.9.2017.

12. The learned Senior Counsel for the petitioners submitted that the Vigilance Commission report, which was the basis for filing the complaint against the petitioners was actually initiated and approved during the time when the petitioner in AB No.21 of 2017 was the Chief Minister of the State. He would submit that the intention of the State authorities is obvious and deer that instead of making the petitioners as witnesses, they have been charged falsely as an accused only for the purpose of harassing them. The said submission made by the learned Senior Counsel deserves consideration for the purpose of deciding the present petitions.

13. Though the learned Senior Counsel for the petitioners submitted that the present Government had made several allegations against the previous Government and they are determined to malign the Image of the previous Government and works executed during their tenure, this Court does not want to go into the merits of the matter, as the same requires a detail enquiry/investigation/trial. Further, the same is not a subject matter of controversy.

14. The only point for determination in these petitions is whether the petitioners are entitled to get anticipatory ball.

15. At this juncture, it would be appropriate to mention the Memorandum of Association of MDS and on a perusal of the same, it is seen that the Management of the Society is vested in the Steering Committee which consists of (1) Chief Secretary to the Government of Manipur; (ii) Agriculture Commissioner and Ex-officio Project Director; (iii) A representative of the Ministry of Home Affairs; (iv) A representative of the Planning Commission; (v) A representative of the State Bank of India; (vi) Secretary, North Eastern Council; (vii) Dr. B.D.Sharma, Vice Chancellor, North Eastern Hill university; (viii) Not more than 3 non-officials or consultants to be nominated to the Committee by a resolution of the Steering Committee which was subsequently amended from time to time but the Chief Minister is not a member of the Steering Committee. Accordingly, the cheque of the Manipur Development Society has to be signed only by a person authorised by the Steering Committee.

16. Thus, whether or not the petitioners have violated the Memorandum of Association is a matter of evidence and therefore, the alleged misappropriation by the petitioners cannot be gone into in the present petitions.

17. As stated supra, the only question to be considered in these petitions is whether the petitioners have made out a case for granting the anticipatory bail. Though the Court Is free to refuse anticipatory bail in any case if there is material before it justifying such refusal, in the given facts and circumstances and the materials produced in the instant case, this is not a fit case for refusal, as the allegations levelled against the petitioners would require thorough investigation/trial. Moreover, the petitioners are not ordinary persons and they are Ex-Chief Minister of Manipur; former Project Director of MDS and former Chairmen of MDS.

18. Section 438 of the Code of Criminal Procedure clearly stipulates in the beginning statement itself that when a person has a reasonable apprehension to believe that they can be arrested on an accusation for commitment of a non-bailable offence, they can move the High Court or the Court of Sessions for grant of an anticipatory ball. The power to grant anticipatory bail must be exercised by the Court in very exceptional cases. The Court must be satisfied that there is a reasonable cause and a reasonable ground for grant of anticipatory bail. Section 438 Cr.P.C. protects the Right to Life and Personal Liberty of such persons by providing them with a remedy against frivolous detention. In a country where rifts and rivalries are common, its

citizens should have a remedy which prevents disgracing their Right to Life and Personal Liberty.

19. In ***Bhadresh Bipinbhai Sheth v. State of Gujarat and another, reported in (2016) 1 SCC 152***, the Hon'ble Supreme Court has laid down certain guidelines in respect of the application for anticipatory bail. In paragraph 25.10, the Hon'ble Supreme Court held as under:

> *"25.10. We all also reproduce para 112 of the judgment in Siddaram Satingappa case, 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 including the 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 overimplication 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 the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

20. In the Instant case, Clause (h) in ***Bhadresh Hipinbhai Sheth*** is more particularly relevant that no prejudice should be caused to tree, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused.

21. As stated supra, the petitioner In AB No.21 of 2017 is Ex-Chief Minister of Manipur and the other petitioners are the then Government Officials who performed duties of Project Director and Chairmen of MDS. Therefore, the contention of the petitioners that to humiliate and harass them by making false allegations, the present FIR has been registered cannot be ignored. The petitioners have apprehended arrest by the police because of the allegations as stated in the complaint. Since the petitioners performed duties as Ex-chief Minister of Manipur, Project Director and Chairmans of MDS, if they were arrested, their image would be tarnished. Further, since the petitioners are responsible persons In the Society, there is no possibility of them to flee, but at the same time, they should cooperate the Investigating agency.

Hence, the apprehension of the petitioners for arrest in respect of the alleged complaint is reasonable. Though the petitioners have been named In the FIR, there is need for further investigation in the matter.

22. At this juncture, it is to be pointed out that by an order dated 6.9.2017, this Court granted interim anticipatory bail to the petitioner in AB No.21 of 2017. While granting interim anticipatory bail, this Court observed that this is a criminal charge and if anybody is sought to be charged with criminal liabilities there ought to be specific allegations with instances of involvement by indicating the manner in which the person accused is involved in any such transaction. That seems to be lacking in the complaint or in the Vigilance Report based on which the FIR was registered. This Court is in agreement with the said observation made by the learned Judge of this Court. Further, in paragraphs 12 and 13, the learned Single Judge held thus:

> *"12. .....*
>
> *There is no specific allegation made against the petitioner, except for the allegations In general terms that the petitioner as the Chairman of MDS during 01.07.2013 to 31.08.2014 would be presumed to have knowledge of the transactions during his tenure of Chairmanship as*

mentioned in Para 2(iii) of the complaint. Of course, the registration of an FIR will set into motion the criminal law, so that a crime cane be properly investigated by the State. Yet, a complaint must allege certain offence and if anyone is named, certainly, the involvement or the named person must be also specifically indicated, more so, in this case, when certain enquiry had been already conducted by the State Vigilance Department, which, is also the basis of the filing of the FIR, which however, has not indicated clearly and specifically the role the petitioner allegedly played in the financial irregularities. It certainly requires further Investigation, which the police may continue to undertake. However, on the basis of the materials disclosed so far, this Court Is of the view that the petitioner may be entitled to an Interim protection.

13. Accordingly, as per the documents and materials disclosed so far, also as produced by the petitioner at this stage, this Court is of the opinion that the petitioner would be entitled to an interim relief at this stage, and It Is accordingly directed that, In the interim and until further order, In the event of arrest of the petitioner In connection with the FIR No.244(9)2017 IPS

u/s 420/406/120-B IPC & 13(2) P.C.Act, 1988, the petitioner shall be released on bail on furnishing a personal bond of Rs.50,000/- (Rupees Fifty Thousand) only in cash or cheque with one surety of the like amount to the satisfaction of the arresting authority."

23. In the instant case, the contention of the petitioners that they have not committed any offence as alleged In the complaint cannot be thrown out as the allegations levelled against the petitioners are matter of evidence and further, there is nothing on record to show that the petitioners previously underwent imprisonment on conviction by a Court in respect of any cognizable offence.

24. If an application for anticipatory ball Is made to the High Court or the Court of Sessions, it must apply its own mind to the question and decide whether a case has been made out for granting such relief. *Prima facie*, in the instant case, the involvement of the petitioners has not been clearly established. Moreover, a mere registration of First Information Report would not amount to Involvement of the petitioners in the alleged offences.

25. In a catena of judgments, the Hon'ble Supreme Court explained the object of Section 438 Cr.P.C. to mean that a person should not be harassed or humiliated In order to satisfy the grudge or personal vendetta of the complainant.

26. It is the specific case of the petitioner In AB No.21 of 2017 that he being the Ex Chief Minister of Manipur has been falsely implicated in the instant case in order to gain political mileage and further if the said petitioner is arrested, then the present Government would make believe to the people of Manipur that the previous Government was corrupt and the present Government Is making all efforts to correct the misdeeds done by the previous Government. This Court does not want to enter into the political thicket, but at the same time, the contention of the petitioners that all the allegations are on mere assumption without any cogent material cannot be ignored.

27. The plea of the CBI is that the Vigilance Enquiry report had found serious irregularities in execution of works and it has been found that a large number of works have been entrusted to contractors without work agreements or following tender procedures and also the payment of funds had been made for such work without following any procedure. The said contention of the respondent CBI, admittedly, requires appreciation of evidence

and the same cannot be a ground for refusing to grant anticipatory bail to the petitioners.

28. No flexible guidelines or straitjacket formula can be provided for grant or refusal of the anticipatory bail because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory ball. In consonance with legislative intention, the grant or refusal of anticipatory ball should necessarily depend on the facts and circumstances of each case.

29. When a person apprehends arrest and approaches a Court for anticipatory bail, his/her apprehension has to be based on concrete facts relatable to a specific or particular offence. Application seeking anticipatory bail should contain clear and essential facts relating to the offence, and why the applicant reasonably apprehends his/her arrest, as well as his/her version of the facts.

30. In the present case, the apprehension expressed by the petitioners is based on the facts relating to specific offences of cheating, criminal conspiracy, breach of trust and misappropriation. In their petitions, the petitioners have narrated the clear and essential facts relating to the aforesaid offences and also their reasonable apprehension. That apart, this Court, earlier

granted interim anticipatory bail to the petitioner In AB No.21 of 2017 and as against the same the respondent CBI has not preferred any appeal. Therefore, if regular anticipatory bail is granted to the petitioners, the ongoing investigation, if any, would not be affected. But, at the same time, the petitioners should cooperate with the investigating agency.

31. For the foregoing discussions, this Court is of the view at the materials produced disclose that the petitioners would be entitled to anticipatory bail and accordingly, all the anticipatory petitions are liable to be allowed.

It is made clear that this Court has not delved into the merits of the case and the opinion expressed herein above shall not in any way prejudice the Court below from proceeding with the case on merits.

32. In the result,

a) all the Anticipatory Bails are allowed;

b) all the petitioners are granted anticipatory bail in the event of their arrest in connection with the FIR No. 244(9)2016 IPS, under Sections 420, 406, 120-B of IPC read with Section 13(2) of the Prevention of Corruption Act,1988, by

executing Personal Bond for Rs. 1,00,000/- with two two sureties of like sum to the satisfaction of Learned Central Bureau Investigation Court;

c) *the petitioners shall make themselves available as and when required by the Respondents CBI;*

d) *if the petitioners fail to appear despite summons, the Respondent CBI is at liberty to approach this Court for cancellation of Anticipatory Bails;*

e) *the petitioners are directed not to leave the country without the permission of the CBI Court.*

WAIKHOM TONEN MEITEI

Digitally signed by WAIKHOM TONEN MEITEI
Date: 2020.07.13 12:12:47 +05'30'

JUDGE

FR/NFR

Sushil