Serial No. 01-04
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

AB No. 2 of 2020 with
AB No. 3 of 2020
AB No. 4 of 2020
AB No. 5 of 2020

Date of Decision: 18.06.2020

Shri. IIbat Siangshai	Vs.	State of Meghalaya
Shri. Jiswell Slong @ Nahwel Slong	Vs.	State of Meghalaya
Shri. Pynioobha Phawa	Vs.	State of Meghalaya
Shri. Sundaystar Slong	Vs.	State of Meghalaya

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. B. Laitmon, Adv.
For the Respondent(s) : Mr. N.D. Chullai, AAG. with
Mr. A.H. Kharwanlang, GA.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

1. An FIR was lodged by one Shri. Jairos Tariang with the I/C Ummulong Police Beat House, West Jaintia Hills District on 14.05.2020 to the effect that on 13.05.2020 at about 3:30 PM the complainant and one Shri Kyrsiew Kharbithai (Headman of Maskut village) while returning to their village by a vehicle driven by Shri Kyrsiew Kharbithai, on reaching a place called Wahumshohthat, one white Maruti Van came and block their way and some persons got out of the vehicle and started beating and assaulting the complainant and Shri Kyrsiew Kharbithai with sharp weapons. The complainant managed to escape to the nearby forest from where he saw the assailants assaulting Shri Kyrsiew Kharbithai. The complainant ran away from the place to seek help and by the time he came back with the law

enforcement personnels, they met Shri Kyrsiew Kharbithai who was grievously injured from his head and all over his body for which he was taken to the hospital for treatment by the police.

2. In the said complaint, the names of some of the accused namely, Jiswell Slong @ Nahwel Slong, Shri. Sundaystar Slong and Shri. Pynioobha Phawa appeared along with some other unnamed persons, whose name is not known to the complainant, but whose faces could be identified by him.

3. The said FIR was duly acknowledged and a case being Jowai P.S. Case No. 44 (5) 2020 under Section 326/307/506/34 IPC was registered by the police.

4. The petitioners herein apprehending arrest had approached the Court of the learned Additional Sessions Judge, Jowai, West Jaintia Hills District with an application under Section 438 Cr.P.C for grant of pre-arrest bail and the Court was pleased to grant interim bail to the petitioners vide order dated 18.05.2020 with certain conditions. However, upon finally hearing the parties, on 26.05.2020 the learned Additional Sessions Judge rejected the application for anticipatory bail.

5. The petitioner along with four others had then approached this Court with similar applications under Section 438 Cr.P.C read with Section 482 Cr.P.C with a prayer for grant of pre-arrest bail, which was registered as AB. No. 2, 3, 4 and 5 of 2020 respectively before this Court.

6. Since the matter relates to a common complaint resulting in the registration of the said Jowai P.S. Case No. 44 (5) 2020 under Section 326/307/506/34 IPC and the argument advanced by the learned counsel for the petitioners and the learned AAG for the State respondents are common in all the above mentioned applications, it is deemed convenient and expedient for this Court to pass a common judgment and order.

7. Upon hearing the learned counsels for the parties, this Court has

called for the Case Diary, which was accordingly produced as directed.

8. Heard Mr. B. Laitmon, learned counsel for the petitioners and Mr. N.D. Chullai, learned AAG assisted by Mr. A.H. Kharwanlang, learned GA for the State respondents.

9. The learned counsel for the petitioners has submitted that there is already a dispute between the parties which is civil in nature over a rich agricultural land called Sung valley which falls under Maskut village presided over by the alleged victim as the Headman and the Complainant as the Secretary.

10. It is also submitted that in the year 2014, a Civil Suit was filed before the Court by the Dorbar Elaka Maskut, wherein an injunction order restraining the petitioner and others was passed prohibiting them from entering the suit land.

11. For an alleged violation of the said injunction order, an altercation took place between the alleged victim and the petitioner and others which led to the petitioner and others to file a complaint before the police on 12.05.2020. It is however alleged that no action was taken on the said FIR.

12. On 13.05.2020 another scuffle allegedly took place between the alleged victim, the Complainant and the Petitioner and others which resulted in an FIR being filed by the Complainant which was registered on 14.05.2020.

13. The petitioners apprehending arrest then approached the Court of the learned Additional Sessions Judge, Jowai, West Jaintia Hills District with an application under section 438 Cr. P.C. for grant of pre-arrest bail, for which the Court granted interim bail in the first instance and then vide order dated 26.05.2020, the learned Additional Sessions Judge rejected the application of the petitioners.

14. The learned counsel for the petitioners has further submitted that the

learned Additional Sessions Judge had failed to consider fundamental principles of Section 438 Cr.P.C while rejecting the first application for grant of pre-arrest bail by the petitioners on the ground that the investigation is in progress and that there is prima facie involvement of the accused and further that the vehicle and weapons are yet to be recovered and also that the co-accused are at large, without considering the fact that the petitioners had cooperated with the investigation, and that there also exists a counter FIR, which was not registered by the police and also the fact that there is a civil dispute between the parties.

15. The petitioners are highly apprehensive and there exist reasons to believe that they may be arrested in connection with the said Jowai P.S. Case No. 44 (5) 2020 and has accordingly approached this Court with a prayer for grant of pre-arrest bail with further submission that if, enlarged on bail, the petitioners will abide by all the conditions to be imposed by this Court.

16. The learned AAG in his counter argument has, at the outset challenged the maintainability of these instant applications under Section 438 Cr.P.C, however at the final hearing has candidly submitted at the bar that the objection on maintainability will not be pursued.

17. The learned AAG has then submitted that a perusal of the FIR would show that all the petitioners herein are named accused and that the learned Additional Sessions Judge has rightly come to a correct finding in his order dated 26.05.2020 that the investigation is in progress, which revealed prima facie involvement of the accused and vital material evidence being the vehicle and the weapons alleged to have been used in connection with the case have yet to be recovered, which would show that if enlarged on bail, the petitioners may tamper with the evidence and obstruct the progress of investigation and accordingly, the prayer for grant of pre-arrest bail by the petitioners may not be considered by this Court.

18. Having heard the learned counsels for the rival parties and on perusal

of the applications preferred by the petitioners as well as the contents of the Case Diary duly produced before this Court, what is necessary to be noted here is that an application under Section 438 Cr.P.C has been filed, the provision of the same reads as follows:

> ***"438. Direction for grant of bail to person apprehending arrest. –*** *(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-*
>
> *i) the nature and gravity of the accusation;*
>
> *ii) the antecedents of the applicant including the fact as to whether he 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; and.*
>
> *iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail:*
>
> *Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.*
>
> *(1A) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.*
>
> *(1B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.*
>
> *(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may thinks fit, including –*
>
> *(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;*

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

[(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of section 376 or section 376AB or section 376DA and section 376DB of the Indian Penal Code (45 of 1860).]"

19. It is a well settled principle of law as attested to by a catena of judgments right from the hand of the Hon'ble Apex Court of this country as well as from the various High Courts that the basic requirement of a person who apprehends arrest on knowledgeable facts and not based on general or vague allegations, particularly on a criminal case being duly registered in a police station**;** that person or persons are entitled to approach a competent Court of law for redressal, particularly under Section 438 Cr.P.C.

20. It is for the Court to consider the application looking into the reasonable apprehension of arrest based on the gravity and seriousness of the offence, which in all probability would result in the imminent arrest of the applicant, if he is not protected by an order of the Court restraining his arrest by the police.

21. It may be mentioned that the order dated 26.05.2020 of the learned Additional Sessions Judge, Jowai is not under revision here, however the same has been referred to by the parties which this Court would look into

only for reference.

22. Coming back to this case in hand, as regard the dispute between the parties, it appears that a civil dispute is already pending before the Court between the complainant, the alleged victim and the petitioners herein, which will show that there is bound to be fiction as far as their relationship is concerned. It is also the submission of the learned counsel for the petitioners that an FIR/complaint was already filed by the petitioners first in point of time, which according to him was not registered by the police. Thereafter, the complainant had filed the complaint against the petitioners, which was duly registered and investigated by the police.

23. The circumstances cited above would suffice for due consideration by this Court which, at this stage would be inclined to allow the application of the petitioners.

24. It is also seen from the contents of the Case Diary, particularly the medical requisition report dated 13.05.2020 as regard the alleged victim, Shri. Kyrsiew Kharbithai where in the opinion of the doctor who has examined him, it is found that there has been an assault by sharp object resulting in head injury, however the same is moderate in nature. Though this Court would not pass any observation on the same as the matter is under ongoing investigation, however for the limited purpose of considering the nature and gravity of the offence alleged, the same requires to be taken into account.

25. In view of the above, I am of the considered opinion that the petitioners are indeed apprehending arrest in connection with the above mentioned Jowai P.S. case and considering the nature and gravity of the alleged offence, they are entitled to protection in the form of pre-arrest bail.

26. Accordingly, the police/I.O is hereby directed to release the petitioners forthwith, if arrested in connection with the said Jowai P.S. case on condition that:

i) That they will not abscond or tamper with the witnesses and evidence.

ii) That they will cooperate with the I/O as and when required.

iii) That they will furnish a personal bond of ₹ 10,000/- (Rupees ten thousand) only with two sureties of like amount to the satisfaction of the trial Court.

27. Consequently, these applications are hereby disposed of accordingly.

28. Interim order dated 05.06.2020 passed by this Court is hereby made absolute.

29. Registry is directed to send back the C.D to the learned GA.

Judge

Meghalaya
18.06.2020
"D. Nary, PS"