Serial No. 01-09
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

AB. No. 16 of 2020 with
AB. No. 17 of 2020
AB. No. 18 of 2020
AB. No. 19 of 2020
AB. No. 20 of 2020
AB. No. 21 of 2020
AB. No. 22 of 2020
AB. No. 23 of 2020
AB. No. 24 of 2020

Date of Decision: 04.11.2020

Shri. Hemindro K. Marak	Vs.	State of Meghalaya & Anr.
Shri. Leninggrade Marak	Vs.	State of Meghalaya & Anr.
Shri. Poendro Sangma	Vs.	State of Meghalaya & Anr.
Shri. Krewingson Momin	Vs.	State of Meghalaya & Anr.
Shri. Tubline K. Marak	Vs.	State of Meghalaya & Anr.
Shri. Prewingson Momin	Vs.	State of Meghalaya & Anr.
Shri. Buta Marak	Vs.	State of Meghalaya & Anr.
Shri. Shri. Martosh Sangma	Vs.	State of Meghalaya & Anr.
Shri. Mintang Marak	Vs.	State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

In AB. No. 16 of 2020

Appearance:

For the Petitioner/Appellant(s) : Mr. K.C. Gautam, Adv.
For the Respondent(s) : Mr. N.D. Chullai, AAG. with
Mr. R. Gurung, GA.

In AB. No. 17 of 2010

Appearance:

For the Petitioner/Appellant(s) : Mr. K.C. Gautam, Adv.
For the Respondent(s) : Mr. N.D. Chullai, AAG. with
Mr. K.P. Bhattacharjee, GA.

In AB. No. 18 of 2020

Appearance:

For the Petitioner/Appellant(s) : Mr. K.C. Gautam, Adv.
For the Respondent(s) : Mr. N.D. Chullai, AAG. with
Ms. I. Lyngwa, GA.

In AB. No. 19 of 2020

Appearance:

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

In AB. No. 20 of 2020

Appearance:

For the Petitioner/Appellant(s) : Mr. K.C. Gautam, Adv.
For the Respondent(s) : Mr. N.D. Chullai, AAG. with
Mr. S. Sengupta, Addl. Sr. GA.

In AB. No. 21 of 2020

Appearance:

For the Petitioner/Appellant(s) : Mr. K.C. Gautam, Adv.
For the Respondent(s) : Mr. N.D. Chullai, AAG. with
Mr. H. Abraham, GA.

In AB. No. 22 of 2020

Appearance:

For the Petitioner/Appellant(s) : Mr. K.C. Gautam, Adv.
For the Respondent(s) : Mr. N.D. Chullai, AAG. with
Mr. A.H. Hazarika, GA.

In AB. No. 23 of 2020

Appearance:

For the Petitioner/Appellant(s) : Mr. K.C. Gautam, Adv.
For the Respondent(s) : Mr. N.D. Chullai, AAG. with
Ms. Z.E. Nongkynrih, GA.

In AB. No. 24 of 2020

Appearance:

For the Petitioner/Appellant(s) : Mr. K.C. Gautam, Adv.
For the Respondent(s) : Mr. N.D. Chullai, AAG. with
Ms. S.G. Momin, Addl. Sr. GA.

सत्यमेव जयते
HIGH COURT OF MEGHALAYA

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

1. These matters has been taken up via video conferencing.

2. An FIR was received at the Resubelpara Police Station vide GDE No. 14 dated 21.09.2020 wherein a case of assault was reported by the Complainants who said that on 21.09.2020 at about 10.00 AM, while five of his labourers were clearing his plot of land situated at Bangalmura village under Resubelpara Police Station, they were apprehended by the petitioner herein and other villagers of Bangalmura village and taken to the community hall. Thereafter, the Complainants, Shri. Manosh M. Marak and Shri. Manik M. Sangma along with Shri. Invarince K. Marak went to the said community hall and there they were allegedly assaulted by the petitioners herein. His private vehicle and cash was also damaged and snatched from him respectively.

3. On receipt of the FIR, Resubelpara P.S. Case No 18(09) 2020 u/s 447/341/323/427/395/307/34 IPC was registered and the Complainant and others were examined by the Investigating Officer.

4. In the said complaint, the names of all the petitioners herein appeared and accordingly, from the records it is seen that they have appeared at the Resubelpara Police Station on 22.09.2020. It is also seen that the statement of almost all of the petitioners was also recorded u/s 161 Cr.P.C.

5. Now, by these related and identical applications under Section 438 Cr.P.C., the petitioners have approached this Court with a prayer for grant of anticipatory bail in connection with the said Resubelpara P.S Case No. 18(09) of 2020. This being the case, it is deemed expedient to club all these applications together and to pass a common order herein.

6. When these applications were initially moved before this Court, apart from making a prayer for production of the case dairy of the said Resubelpara P.S Case No. 18(09) 2020, there was also a prayer made for grant of interim bail which prayer was allowed by this Court.

7. On the case dairy being duly produced before this Court, the parties were heard.

8. Mr. K.C. Gautam learned counsel for the petitioners has submitted that the genesis of the dispute is a plot of land which was claimed by the Complainant as well as the petitioners as members of the village, wherein lies the said land. Therefore, this case has a civil flair in it, inasmuch as, the land claimed by the Complainant, who is also the Nokma of Resu'Aking is actually a reserved forest of the village.

9. However, on the complaint of the Complainant, the FIR was registered with a number of sections under the IPC, including Section 395 IPC which is a serious charge when actually the dispute as stated above is essentially civil in nature which could not be agitated under a complaint to the police. Even a counter FIR filed by the petitioners have also not been registered, it was further submitted.

10. As to the law relating to anticipatory bail in the context of these applications, the learned counsel has cited the case of ***Siddharam Satlingappa Mhetre v. State of Maharashtra & Ors: (2011) 1 SCC 694*** paragraph 111 and has submitted that the Apex Court has laid down the parameters that has to be taken into consideration by a court before whom an application for anticipatory bail is being heard.

11. Finally, learned counsel for the petitioners has submitted that this Court may peruse the case dairy and considering the fact that the Complainant being a very influential person, there is an apprehension of being arrested on the part of the petitioners for which prayer for grant of anticipatory bail is hereby made and this Court be pleased to grant the same

on any conditions deemed fit and proper.

12. Mr. N.D. Chullai, learned AAG has submitted that the case dairy has been placed before this Court, which after perusal of the same, if the Court is inclined to allow these applications, then one of the condition may be for ensuring that the forest land is saved.

13. Having heard the learned counsels for the parties, what is factually on record has been related hereinabove and as such, there is no need for repetition of the same. Suffice it to say that the consideration would be as to whether the petitioners herein are under a state of reasonable apprehension of being arrested in the said Resubelpara P.S Case No. 18(09) 2020.

14. The fact that the petitioners are part of the proceedings as evinced from the said FIR dated 21.09.2020, inasmuch as, they have been named therein and that they have also been questioned by the I/O and further that their statements under Section 161 Cr. P.C. has been also been recorded only goes on to show that these applications are justified under the circumstances.

15. In the case of ***Siddharam Satlingappa Mhetre (supra)*** cited by the learned counsel for the petitioners at paragraph 111 of the same the Hon'ble Supreme Court has held as follows:

> ***"111.*** *No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case. As aptly observed in the Constitution Bench decision in Sibbia case 1980 SCC (Cri) 465, that the High Court or the Court of Session has to exercise their jurisdiction under Section 438 CrPC by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour".*

16. The above proposition has centered only on the aspect that grant or refusal of anticipatory bail has to be based on the facts and circumstances of each case, however the parameters set out within which the courts are guided to aid them while considering this aspect of grant of anticipatory bail is seen at paragraph 112 of the said ***Siddharam Satlingappa Mhetre*** case which reads as under:

> ***"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".

17. The case of the petitioners viewed in the light of the above would convince this Court that under the facts and circumstances therein, grant of anticipatory bail can be considered and is hereby done so.

18. These applications are accordingly allowed and the petitioners, if arrested by the police in the said Resubelpara P.S Case No. 18(09) of 2020, the police are directed to release them on bail on the following conditions:

(i) That the petitioners individually has to produce personal surety of ₹ 20,000/- (Rupees twenty thousand) each along with one surety of like amount to the satisfaction of the I/O;

(ii) That they shall not tamper with the evidence or witnesses;

(iii) That they shall not abscond or leave the jurisdiction of India;

(iv) That they will co-operate with the I/O as and when required.

19. With the above, these set of applications are hereby disposed of by this common order.

20. The interim bail granted in course of these proceedings is hereby made absolute.

21. Registry is directed to send back the case dairy and copy of this order to all concerned.

Judge

Meghalaya
04.11.2020
"D. Nary, PS"