Serial No. 5
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

AB. No. 25 of 2020

Date of Decision: 05.11.2020

Shri. Krishna Kumar Sharma Vs. State of Meghalaya

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. H.Abraham, Adv.
For the Respondent(s) : Mr. B.Bhattacharjee, 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. This matter has been taken up via Video Conferencing.

2. Heard Mr. H.Abraham learned counsel for the Petitioner who has submitted that, the Petitioner herein has been arrayed as one of the accused in GR Case No. 8(6)2020 corresponding to Shella PS Case No.9(2)2020 u/s 148/326/506/307/302/34 IPC r/w section 3 of the PDPP Act.

3. The Petitioner has been summoned to appear before the Court of the learned Judicial Magistrate, Sohra Sub-Division, East Khasi Hills on 04.09.2020 on the strength of the summon dated 21.08.2020.

4. The learned counsel has further submitted that there is no allegation against the Petitioner in the FIR. However, since a number of persons have been arrested in connection with the instant case and charge sheet have been

filed against an equally large number of persons, the Petitioner was also sought to be arrested by the police from time to time since he was charge sheeted u/s 148/506/427 IPC and not as was noted down in the said summon.

5. It is not the intention of the Petitioner to avoid appearance in court, however, because of the pandemic situation, he could not appear before the court on the said date fixed.

6. It is further submitted that the Petitioner if enlarge on pre-arrest bail, is willing to abide by any conditions imposed by this court and is also willing to attend proceedings of the court on every date fixed.

7. Per contra, Mr. B.Bhattacharjee, learned AAG has submitted that on perusal of the summons at Annexure 3 of the instant petition what could be seen is that the Petitioner was summoned to appear before the court on 04.09.2020 and he has not denied that he did not receive the said summon. Therefore, by refusing to pay before the court, it is apparent from his conduct that he is avoiding the court proceedings and has approached this court with this instant application only to circumvent the process of law. It is prayed that the prayer for grant of interim bail of any other prayer related thereto, may not be granted by this Court.

8. Before adverting to the submission and contention of the parties herein, a look at the concept of anticipatory or pre-arrest bail would be proper to place the issue under the correct perspective.

9. The concept of bail and anticipatory bail has a very long history behind it. It is said that it originates in the medieval times, when king John of England brought out the "***Magna Carta***" which is more or less the unwritten constitution of England. At clause 39 of the "Magna Carta", the English translation would read as follows:

> " *39. No free man is to be arrested, or imprisoned, or disseised, or outlawed, or exiled, or in any other way ruined, nor will we go against him or send against him, except by the lawful judgment of his peers or*

by the law of the land".

This clause is said to be the forerunner of the provisions of bail as provided in the Cr.PC. However, the old Cr.PC of 1898 did not have any provision for anticipatory bail or pre-arrest bail and the idea of anticipatory bail or pre-arrest bail was first recommended to the Parliament only at the 41st Law Commission Report, which resulted in the incorporation of Chapter 33 of the Cr.PC of 1973, wherein section 438 was inserted. Section 438 (1) provides 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."*

10. While deciding on whether to grant or refuse pre-arrest bail, the High Court or the Court of Sessions has to consider the factors enumerated above and in this process, discretionary power is thrust upon the Court, which power should be applied judiciously.

11. The Supreme Court in a catena of judgment has laid a very strong foundation for the High Courts and the Sessions Courts to guide them in the use of discretionary powers.

12. In the case of "Gurbaksh Singh Sibbia v. State of Punjab" 1980 AIR 1632 at paragraph 21 of the same, the Hon'ble Supreme Court has held that:

> *"**21**. A wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use. Every kind of judicial discretion, whatever may be the nature of the matter in regard to which it is required to be exercised, has to be used with due care and caution. In fact, an awareness of the context in which the discretion is required to be exercised and of the reasonably foreseeable consequences of its use, is the hallmark of a prudent exercise of judicial discretion. One ought not to make a bugbear of the power to grant anticipatory bail…"*

13. Again, in the case of "***Siddharam Satlingappa Mhetre v. State of Maharashtra &Ors":*** *(2011) 1 SCC 694,* the Supreme Court has laid down certain guidelines as regard anticipatory bail. In paragraph 112 of the judgment it was held that:

> ***"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 the 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 accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication 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".

14. Now coming to the case in hand what is observed is that, the Petitioner is aware that he is one of the accused in the said GR Case No. 8(6)2020 and he is also aware that a summon has been issued against him which was duly received. The grounds cited by the Petitioner for not being able to respond to the said summon are not convincing to the extent that it is incumbent for him to obey the due process of law which he has not done so at the relevant time. At this stage, to seek indulgence of this Court as far as grant of pre-arrest bail is concerned, would only compel this Court to exercise its discretionary powers injudiciously.

15. The conduct of the Petitioner in not appearing before the Trial Court when called upon to do so, have weigh heavily on this Court and as a consequence thereof, this Court is not inclined to favorably answer to the prayer made in this instant application.

16. In the final analysis, the application for grant of pre-arrest bail is hereby rejected and the same stands dismissed.

17. Application disposed of. No cost.

Judge

Meghalaya
05.11.2020
"Mr. N.Swer, Stenographer"