

A.B. No. 20 of 2018

Date of order: 13.08.2018

Shri Ginan M. Marak Vs. State of Meghalaya & Ors.

**Coram:**

**Hon'ble Mr. Justice Mohammad Yaqoob Mir, Chief Justice**

**Appearance:**

For the Petitioner/Appellant(s) : Mr. H.R. Nath, Adv.  
For the Respondent(s) : Mr. H. Kharmih, GA

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

**Oral:-**

1. The case has been registered for commission of offences punishable under Sections 498-A and 324 IPC. Petitioner apprehending arrest had filed an application under Section 438 Cr.P.C. before the Court of learned Sessions Judge, West Garo Hills, Tura, interim relief was granted vide order dated 12.07.2018 but finally vide order dated 25.07.2018, on perusal of the Case Diary the learned Sessions Judge observed that it being the case of serious domestic violence, there has been an attempt endangering the victim's life that can lead to even murder, therefore, it shall be appropriate to give ample opportunity to the Investigating Agency to investigate the case, application was accordingly rejected, hence instant fresh petition before this Court.

2. It is settled that even though the power under Section 348 Cr.P.C. between High Court and Sessions Court is concurrent, but if an application is accepted or rejected by the Sessions Judge same will not operate as a bar to the High Court for entertaining fresh application under Section 438 Cr.P.C.

3. The allegation against the petitioner is that he has been torturing his wife, from the year 1995. The Women Wing has come forward and lodged a report against the petitioner based on which case has been registered as Case No. 37 (7) 2018 in Tura Women Police Station for commission an offence under Sections 498-A and 324 IPC.

4. The punishment prescribed under Section 498-A IPC is imprisonment for a term which may be extended to three years and fine whereas, for offence under Section 324 IPC, a punishment of imprisonment of either description for a term which may be extended to three years, or with fine, or both. Both the offences are non-bailable, therefore, application under Sections 438 Cr.P.C. is maintainable. Now the question is, as to whether pre-arrest bail can be granted, if not, whether any purpose would be served.

5. Neither objections nor latest report has been filed on behalf of the respondents. However, the Investigating Officer WPSI Ms. B. Hajong is present along with the Case Diary. Perusal of the Case Diary reveals that the statements of important witnesses have been recorded, it also reveals that after interim protection was granted to the petitioner by the court of the learned Sessions Judge, he had appeared before the Investigating Officer and cooperated with the investigation which fact is stated by the Investigating Officer present in the Court. It is specifically alleged by the petitioner that as a matter of fact, it is he who has been subjected to torture by his wife and his son, who alleged that the petitioner is an alcoholic.

6. Keeping in view the entire gamut of the case, then, the stage of investigation coupled with the fact that the petitioner has been cooperating with the Investigating Officer after he was granted interim relief by the court of the Sessions Judge then, the important fact that the petitioner allegedly had been driven out of his home so, is presently residing with his niece at a place which is allegedly 25 km away from the place of his residence where his wife and son are residing. The gravity of the offence and the punishment as prescribed, indulgence is warranted, therefore,

petition is disposed of with a direction that the petitioner, in the event of arrest in connection with the said case shall be released on furnishing surety bond to the tune of Rs. 20,000/- (Rupees twenty thousand) and the personal bond of like amount subject to the following conditions:

(i) That the petitioner will remain available to the Investigating Officer from 11:00 a.m. to 3:00 p.m. commencing from 17.08.2018 for a period of seven days and thereafter, will remain available to the Investigating Officer for investigation purposes as and when required;

(ii) That he will not leave the limits of West Garo Hills District, Tura without previous permission of the Investigating Officer;

(iii) That he will not in any manner impede the investigation and that;

(iv) he will not in any manner make any effort to win the witnesses.

7. It shall be open for the Investigating Officer or the complainant to seek cancellation of the concession granted, if at any point of time the petitioner is noticed to be not following any of the aforesaid directions.

8. After perusal, the Case Diary is returned to the Investigating Officer. Copy of this order be supplied to the Investigating Officer.

10. Petition shall stand disposed of as above.

**(Mohammad Yaqoob Mir)**  
**Chief Justice**

Meghalaya  
13.08.2018  
"Sylvana PS"