



Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

AB. No. 3 of 2021

Date of Decision: 23.02.2021

Shri. Akash Gupta

Vs.

State of Meghalaya.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K. Ch. Gautam, Adv.
For the Respondent(s) : Mr. N.D. Chullai, AAG. with
Ms. R. Colney, 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 |

1. An FIR No. 0050 registered under Section 498-A, 323, 504, 506 IPC r/w Section 3 & 4 of the Dowry Prohibition Act dated 08.02.2021 was lodged against Shri Akash Gupta, the Petitioner herein at the Mughal Sarai Police Station, District Chandoli in the State of Uttar Pradesh by Smti Sunaina Tulsian, the wife of the Petitioner. Of course, in the said FIR besides the Petitioner, his father, mother, sister and another relative were also named.

2. At present the Petitioner is residing at Tura in the West Garo Hills District of Meghalaya being a Class I registered Contractor and a Director of CCL Pvt. Ltd engaged in road development projects in the State of Meghalaya and is said to have been living in Meghalaya for the last ten years.

3. On coming to know of the said FIR lodged against him, the Petitioner apprehending arrest, has approached this Court with this instant application under Section 438 Cr.P.C with a prayer for grant of anticipatory bail in connection with the said case as mentioned above.



4. Before this matter can be heard on merits, a preliminary issue as regard jurisdiction was taken up for hearing.

5. Mr. K. Ch. Gautam, learned counsel for the Petitioner has submitted that admittedly the FIR against the Petitioner was lodged at Mughal Sarai P.S in the State of Uttar Pradesh, however the Petitioner is before this Court seeking transit anticipatory bail to allow him to move an application for anticipatory bail before the Court of actual jurisdiction albeit even if it is only for a specific period of time.

6. To support his case, the learned counsel has referred to the case of **Arnesh Kumar v. State of Bihar & Anr: (2014) 8 SCC 273** at paragraphs 4, 5, 10 & 11 as well as the case of **Shantanu Shivlal Muluk v. State of Maharashtra in 965 Anticipatory Bail Application No. 154 of 2021** referable to the Order dated 16.02.2021 at paragraph 10 of the same, passed by the Hon'ble Bombay High Court in the abovementioned case.

7. Mr. N.D. Chullai, learned AAG along with Ms. R. Colney, learned GA for the State respondent has not oppose the prayer of the Petitioner and has instead assisted this Court by referring to the Order dated 31.10.2018 passed by the then Chief Justice of this Court sitting in Single Bench in the case of **Smti Merry Bina Marak v. State of Meghalaya in A.B. No 22 of 2018**, wherein at paragraph 19 of the same, the Court has observed as follows:

“19. For the stated reasons and the law, I hold that power to be exercised under Sections 438 and 482 CrPC rest with the High Court or Court of Sessions within whose jurisdiction occurrence or part of occurrence has taken place. However, for grant of transitory pre-arrest bail regarding non-bailable offences in the deserving cases, power of the High Court or Court of Sessions within whose jurisdiction, person resides or place where he apprehends arrest, is permissible as such not barred. Therefore, accused can invoke jurisdiction of the High Court or Court of Sessions within whose jurisdiction he resides or place where he apprehends arrest however, grant of pre-arrest transit bail can't be a matter of routine. Host of circumstance, including heinousness of the crime have to be taken care of.”

8. Upon hearing the parties herein, what can be understood is that this application for grant of anticipatory bail, transit in nature, has been preferred



by the Petitioner, who is presently residing within the jurisdiction of this Court for the reason that he apprehends arrest in connection with a case registered as FIR No. 0050 within the jurisdiction of the Mughal Sarai P.S in the State of Uttar Pradesh.

9. The provision of transit anticipatory bail is not available under the Code of Criminal Procedure; however, the concept can be derived from the various provisions of the Code which speaks about the power of a police officer to execute a warrant beyond the local jurisdiction of the Court issuing the same and such person, if arrested, is to be produced before the nearest Magistrate of District Superintendent of Police or Commissioner of Police and if the offence is bailable, the said Court is empowered to allow such arrested person to go on bail. This is commonly known as transit bail and the relevant provisions are Sections 79, 80 and 81 of the Cr.P.C.

10. The concept of transit bail when applied to the provision of Section 438 Cr.P.C which empowers a Court of Sessions or the High Court to allow the Petitioner to be enlarged on anticipatory or pre-arrest bail on reasonable ground of apprehension would equally be applicable even if the apprehension of arrest relates to an offence, which might have been committed in some other States, while the petitioner is residing in some other States outside the alleged place of occurrence.

11. In the case of ***Shantanu Shivlal Muluk (supra)*** the Hon'ble Bombay High Court has pointed out this particular aspect of the matter when at paragraph 10 of the same, it has referred to the decision of a Division Bench of the Bombay High Court in the case of ***N.K. Nayar & Ors v. State of Maharashtra [MANU/MH/0534/1985]*** which is reproduced as follows:

“While considering the question as to whether the provisions of Section 438 of the Code of Criminal Code, 1973 can be utilized by this Court when the case or the contemplated criminal proceedings would be in some other State, has held that, if arrest is likely to be effected within the jurisdiction of this Court, the concerned person should have the remedy of applying to this Court for anticipatory bail even if offence might have been committed in some other State. It is further observed that, consequently this Court would have jurisdiction if a person is



likely to be arrested at a place within the jurisdiction of this Court.”

12. This Court for the limited issue under consideration is in respectful agreement with the order passed by a concurrent Bench of this Court in the said case of **Smti. Merry Bina Marak (supra)** as well as in the case of **Shantanu Shivlal Muluk (supra)** passed by the Hon’ble Bombay High Court. Consequently, I find that this application has merit to the extent that a prayer for grant of transit anticipatory bail has been made out and that this Court has the jurisdiction to pass such an order.

13. It is made clear that the merits of the case under Mughal Sarai P.S FIR No. 0050 need not be discussed in detail in this application as the Petitioner has to make out his case before the competent Court on being directed to appear on expiry of the transit period.

14. It is hereby directed that in the event the Petitioner is arrested, he shall be forthwith release on bail on the following conditions that:

- i) He shall cooperate with the Investigating Officer as and when required;
- ii) He shall not abscond or tamper with the evidence and witnesses;
- iii) He shall produce a personal bond of ₹ 50,000/- (Rupees fifty thousand) only with one surety of like amount to the satisfaction of the arresting authority.

15. This transit anticipatory bail will be valid only for a period of 15(fifteen) days from today to allow the Petitioner to appear before the Court concerned for necessary action.

16. Registry to furnish copy of this order to the learned counsel for the Petitioner for due compliance.

17. This application is accordingly disposed of. No cost.

Judge

Meghalaya
23.02.2021
“D. Nary, PS”