

(2009) 12 GAU CK 0014
In the Gauhati High Court
Case No : Bail Application No. 5043 of 2008

Dominic Pendanath

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

Date of Decision : 17-12-2009

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 366, 380, 497, 498

Citation : (2010) 1 GLT 419

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : J.C. Barman, R. Sagar and A.K. Philip, for the Appellant; B. Banerjee, for the Respondent

Judgement

Amitava Roy, J.—The remnants of the present proceeding registered on an application u/s 438 Code of Criminal Procedure (hereinafter referred to as the Code of Criminal Procedure) made by the Petitioner for grant of pre-arrest bail in connection with Doimukh P.S. Case No. 13/ 2008 under Sections 497/498 Indian Penal Code (for short hereafter referred to as the Indian Penal Code) remain for judicial scrutiny in view of the direction of this Court contained in its order dated 17.11.2008 requiring the Inspector General of Police, Arunachal Pradesh, to cause an enquiry to be made into the allegations of his wrongful detention in custody and torture thereat. The Petitioner meanwhile has been released on bail.

2. I have heard Mr. J. C. Barman, learned Counsel for the Petitioner and Mr. B. Banerjee, learned Public Prosecutor, Arunachal Pradesh.

3. The factual background in brief indispensable. On a complaint being lodged by one Shri Tana Hali Tara on 26.8.2008 with the Extra Assistant Commissioner, Doimukh, Papum Pare District (A.P.), alleging that the Petitioner had enticed away his wife Smt. Tana Rupali. The said authority who at the relevant point of time had been functioning as Judicial Magistrate First Class, Doimukh, forwarded

the same to the officer-in-Charge, Doimukh Police Station, to register a case and launch an investigation. Thereby the Police was also authorised to arrest the Petitioner and produce him in his Court. Accordingly Doimukh P.S. Case No. 13/2008 was registered under Sections 497/498 Indian Penal Code and the officer-in-Charge, Doimukh P.S. took over the responsibility to investigate the case. As the original records of this case would reveal, on the very next date, on a prayer made on behalf of the Investigating Authority, me Judicial Magistrate First Class, Doimukh, Papum Pare, issued a non-bailable warrant of arrest against the Petitioner and entrusted the officer-in-Charge, Doimukh P.S., to execute the same. A "look out" notice was also published in the issue dated 30.8.2008 of the local daily "Arunachal Times" carrying the name and particulars of the Petitioner with an appeal to all concerned to assist the Police to trace him (Petitioner) out.

4. While the matter rested at that, the Petitioner filed the application for anticipatory bail as referred to hereinabove before this Court on 30.9.2008. On permission being sought for from the Hon"ble the Chief Justice to move the application at the Principal Seat, expressing apprehension of risk to his life and security in Arunachal Pradesh, the same was granted. This Court by order dated 1.10.2008 while ordering production of the case diary on 5.11.2008 issued the following operative directions.

In the meantime, pending production of the case diary, if the police wishes to arrest the Petitioner Mr. Dominic Pendanath, Doimukh Police Station Case No. 13/2008 registered under Sections 497/498 of the Indian Penal Code, on furnishing bail bond of Rs. 5000/- to the satisfaction of the arresting officer, he shall be permitted to go on interim bail by the arresting officer.

5. The Petitioner, however, on 17.11.2008 filed an affidavit before this Court alleging as hereunder.

4. That, on 8.10.2008 the deponent along with bailor appeared before S.P. Papumpare at Banderdewa with a copy of the order of the Hon"ble Court for interim bail. At the time along with S.P., O.C., Naharlagun, O.C. Banderdewa, O.C. of Doimukh and Circle Inspector, Police were present. Though there was order to be permitted to go on bail of Rs. 5000/- to the deponent accused Petitioner, the above arresting officers/authority deliberately and wilfully disobeyed the order of this Hon"ble Court and confirmed him to the lock up at Banderdewa till 10th morning and was not produced before any Magistrate. On 10.10.08 morning the deponent was taken to Naharlagun Police Station. That day the Extra Assistance Commissioner cum Judicial Magistrate, Doimukh came to Naharlagun Police Station and met the deponent at the Police Station. After that he was put in Judicial Custody at Naharlagun Police lock up. He was detained there from October 11 to October 14, 2008. During this period his head was shaven forcefully by the police. At night in the name of interrogation, he was mercilessly beaten up and persecuted throughout the whole night and kept him in necked condition in the lock up by the above officials.

5. That, then the deponent the accused Petitioner of the bail application was forwarded to the EAC cum Judicial Magistrate, Doimukh and rejected the bail application in spite of the order for release of the accused Petitioner on interim bail and only on 16.10.2008 he was released on bail with local sureties. The accused Petitioner not being a local person of Arunachal Pradesh the learned Magistrate arbitrarily refused even to accept the deposit of the cash of bail amount and release the accused on bail.

A copy of the application for bail before the learned Magistrate is annexed as Annexure No. III.

6. That, the deponent Petitioner on being released on bail got himself treated and examined at Dimapur District Hospital on 17.10.2008 as out patient being registration No. 19117 dated 17.10.2008 and the doctor had issued a medical certificate on this stating the injuries sustained due to the beating by police.

A copy of the medical certificate is annexed herewith as Annexure No. IV.

7. That, the deponent the accused Petitioner had got his injuries photographed so sustained due to the beating by police on 17.10.2008.

6. On the basis of the above, he therefore alleged deliberate and wilful disobedience of the order dated 1.10.2008 of this Court passed in the instant bail application, his illegal detention and gruesome assaults on him in the name of interrogation. The direction to enquire into these allegations was thus issued on a consideration of these statements supported by a solemn affirmation of the Petitioner.

7. An enquiry report dated 18.12.2008 conducted by the Superintendent of Police (SIT), PHQ, Itanagar, has been submitted along with the documents mentioned therein. A report of the Superintendent of Police, Capital Itanagar, dated 1.12.2008 submitted with the Superintendent of Police, (SIT), PHQ, Itanagar, has also been filed. Both sides have also exchanged pleadings on the reports apart from recording their assertions on the attendant facts and circumstances of the case.

8. Whereas Mr. Barman has persuasively urged that the report does not project wholly the correct state of affairs, the same when considered with other materials on record including the averments made by the Petitioner in his affidavits, amply establish the allegations regarding his unlawful detention in custody and torture in course thereof. The learned Counsel has pleaded that as it is not safe for the Petitioner to appear before the Enquiry officer in connection with the probe, appropriate orders of this Court ought to be made on the basis of the available inputs in the interest of justice and the majesty of the rule of law.

9. Mr. Banerjee as against this has argued that not only the report which is based on contemporaneous facts and records demonstrate the falsity of the imputations made by the Petitioner, his unilateral allegations without the same being tested in the enquiry ought not to be acted upon by this Court. While contending that

meanwhile a charge sheet has been submitted against the Petitioner in the aforementioned police case under Sections 497/498/366/380 of the Indian Penal Code, the learned Public Prosecutor has insisted that the matter ought to be closed with a direction for expeditious trial requiring the Petitioner to be present therefor.

10. I have extended my thoughtful consideration to the rival pleas and the materials available. The allegations made by the Petitioner for convenience can be paraphrased as hereunder.

(1) His arrest on 8.10.2008 on his appearance at the Banderdewa Police Station in the face of the interim order of bail dated 1.10.2008 granted by this Court and his detention thereafter is not only illegal and violative of his right to life as guaranteed under Article 21 of the Constitution of India but also in conscious and deliberate violation of the said order.

(2) He was not produced before the nearest Court of law within 24 hours of his arrest and was so done on 10.10.2008.

(3) His remand to police custody by Judicial Magistrate First Class, Doimukh, inspite of the interim order of bail dated 1.10.2008 granted by this Court is grossly illegal, unauthorised and without jurisdiction besides being in contemptuous disregard to this Court.

(4) He had been subjected to custodial torture between 11.10.2008 and 14.10.2008 in the name of interrogation without any authority of law. He was also tonsured forcibly in jail.

(5) In spite of his application dated 14.10.2008 before the Judicial Magistrate, First Class, Doimukh, to grant him bail in terms of the order dated 1.10.2008 of this Court, the consideration thereof was delayed.

(6) Though the bail was granted on 15.10.2008, it was saddled with the condition of execution of a bail bond of Rs. 5,000/- by two local sureties to further delay his release, which actually was possible on the next date i.e. 16.10.2008.

11. The enquiry report, which admittedly is an interim one, reveals the following findings.

(1) The Petitioner was arrested on 8.10.2008 at about 1800 hours at Banderdewa Police Station on being produced by Father Andrew and Father Jose of Harmuti (Assam) in connection with Doimukh P.S. Case No. 13/2008 under Sections 497/498 Indian Penal Code.

(2) At the time of his arrest, S.I. L. Bagra, O.C. PS., Doimukh, Inspector Tab Tech, CI Doimukh. S.I. N. Riba, OC, PS. Banderdewa and Shri Hibu Tamang, S.P., Papum Pare were present at the P. S.

(3) The Petitioner at that point of time did not produce the bail order passed by

this Court before the Police. Such order was also by then not received by the Police.

(4) The Petitioner was produced before the Judicial Magistrate, First Class, Doimukh, on 9.12.2008 at 10.30 hours and by the order of this Court was remanded to police custody for seven days for further interrogation and investigation.

(5) As it transpired that there was a grave threat to his life and security arising out of intense public outrage over the charge made against him and that a series of law and order situations in fact had occurred, he was shifted out of Doimukh P.S. and kept at P.S. Banderdewa and Naharlagun.

(6) The Judicial Magistrate, First Class, Doimukh, also visited P.S. Naharlagun to ensure compliance of all rules pertaining to his arrest.

(7) He along with others on his own volition got his head shaven on 14.10.2008 in course of routine hair cut of the inmates of the Naharlagun P.S. lock up along with others.

(8) As inspite of the grant of order of bail on 15.10.2008, the bail bond could not be executed for want of bailor, the Petitioner was brought back under police escort to P.S. Naharlagun and in the same evening forwarded to the General Hospital, Naharlagun, for general check up on the conclusion whereof he was certified to be fit to be kept in custody.

(9) No decisive finding on his allegation of his assault and torture during his detention during 11th October to 14th October, 2008, was possible in absence of the Petitioner whose presence could not be secured inspite of all out endeavours.

(10) The allegation that he suffered injuries because of the assault is contradicted by the certificate issued by the Senior Medical officer of General Hospital, Naharlagun, who examined him and certified him to be fit on 15.10.2008.

(11). Though it is confirmed that he had undergone treatment on 17.10.2008 in the OPD of the District Hospital, Dimapur, on 17.10.2008, the details could not be ascertained as those were recorded in the patient's prescription, which is in the custody of the Petitioner. Moreover, no medico legal case had been registered on any complaint by the Petitioner in this regard.

12. The contents of the letter dated 1.12.2008 of the Superintendent of Police, Capital Itanagar, are substantially in the same lines. Whereas the enquiry report does not as such mention the names of the persons interrogated or the records consulted for the findings contained therein, the letter dated 1.12.2008 refers to inputs/reports furnished by the officer-in-charge, Naharlagun/Banderdewa/Doimukh and Circle Inspector (P), Doimukh. Both the enquiry report as well as the letter, however, are accompanied by copies of documents including GD. entries of P.S. Banderdewa, Doimukh, Naharlagun, copy of remand order, copy of

arrest memo etc. It is more than apparent from the enquiry report and the letter dated 1.12.2008 that neither the version of the Petitioner in person nor of his witnesses including those who had accompanied him to the Banderdewa P.S. and were present at the time of his arrest had been recorded. The authority concerned thus has expressed its inability to return decisive findings on the allegation of custodial torture.

13. Whereas the Petitioner has reiterated the charges in his affidavit, filed against the report the State Respondent while abiding by the enquiry report has in clear terms underlined that a further probe is warranted into the allegations, which in absence of the Petitioner is not feasible. It has, however, been assured that presently the Petitioner need not be apprehensive of his life and security and that he in his discretion may appear and make his statement before the highest official of the police department or before any Court of law in the State.

14. To start with, it is noticeably little unusual for a Court of law before which a complaint disclosing an offence is filed while referring it to the police for registration of a case and investigation would issue at that stage a direction as well to arrest the accused person named therein. In the case in hand, the Judicial Magistrate, First Class, Doimukh, in the complaint dated 26.8.2008 had made such an endorsement. He also followed it up with an order dated 27.8.2008 issuing a non-bailable warrant of arrest on a request made by the Investigating officer. Keeping in mind, the avowal of the Petitioner of his false implication in the case and intended harassment at the instance of the complainant, who is an influential person of the locality, the orders as above by the Judicial Magistrate, First Class, Doimukh, appear to be a little overzealous in nature and irreconcilable with normal scheme of investigation of a case at its preliminary stages. The facts and circumstances at that point of time did not, as the materials available, would disclose, present such an exceptional situation for issuance of a non-bailable warrant of arrest against the Petitioner. I leave it at that for the present.

15. The Petitioner's plea of being arrested on 8.10.2008 inspite of the disclosure of the order of interim bail dated 1.10.2008 of this Court is however not borne out by the coeval official or the Court records. Such an assertion finds place in the pleadings of the Petitioner before this Court. Though it is unlikely that the Petitioner would have ventured to appear before the police without being armed with the interim order of bail of this Court, no finding of a conclusive nature in support of his pleading is possible to be recorded at this stage in absence of better evidence in this regard. In the opinion of this Court, the statement of the Petitioner and his two companions at that point of time may prove to be determinative to this effect. The competing pleadings both supported by solemn affirmations on this aspect of the enquiry only raise disputed questions of facts, which the materials on record as available do not serve to reach an unimpeachable conclusion in support of the indictment

16. The Petitioner's plea of not being produced before a Court of law within 24

hours is also belied by the order dated 9.10.2008 of the Judicial Magistrate, First Class, whereby he was remanded to police custody for a period of seven days. The forwarding report dated 9.10.2008 discloses in clear terms that the Petitioner's arrest was on the strength of the non-bailable warrant of arrest.

17. Admittedly the Petitioner had submitted an application for his release on bail in terms of the interim order dated 1.10.2008 of this Court on 14.10.2008. Though a copy of the said order accompanied his application, the Judicial Magistrate, First Class, deferred the consideration thereof till the next date i.e. 15.10.2008. Here as well, the said Court lacked in expedition and response that was expected of it in the face of the assertion of grant of interim bail by this Court as made in the application. Though bail was granted on 15.10.2008, it was subjected to the following conditions.

(1) The accused should furnish a bail bond with two local sureties of Rs. 5,000/- or like amounts.

(2) The accused should cooperate with the Investigating officer in the completion of the investigation and for the purpose, the accused should not leave Papum Pare District without the permission from the Court.

(3) The accused should also appear before the Investigating officer twice in a month till completion of the investigation or as directed by the Investigating officer.

18. The above order notwithstanding, as the bailors as ordered, could not be furnished, the Petitioner was remanded to judicial custody at Itanagar or Naharlagun P.S. for another seven days or till execution of the bail bond whichever was earlier. The Petitioner, however, was released on bail on the next date i.e. 16.10.2008 on his compliance of the conditions enumerated in the order dated 15.10.2008.

19. Having regard to the order of interim bail granted by this Court on 1.10.2008 and extended thereafter from time to time, the Judicial Magistrate, First Class, Doimukh, in imposing the conditions as referred to in the order dated 15.10.2008 had for all practical purposes clearly modified the order dated 1.10.2008. Not only the same was unwarranted and impermissible in law, in view of the hierarchical orientations of the two Courts, it visibly delayed the release of the Petitioner atleast by a day.

20. The orders of the Judicial Magistrate, Doimukh, as noticed hereinabove, from the stage of the initiation of the case when cumulatively viewed leave much more to be desired. As alluded hereinabove, a conclusive finding on the Petitioner's allegation with regard to the custodial torture of the kind narrated by him and the injuries suffered as a consequence thereof on the basis of the factual inputs available is not possible in absence of better evidence as the rival versions are more or less equibalanced. Noticeably the Petitioner has declined to confess his guilt as alleged before the Judicial Magistrate, First Class, Doimukh. when

produced before him on 16.10.2008. This is significant in the face of a statement said to have been made by him before the Police on 14.10.2008 the charge as levelled against him.

21. Be that as it may, meanwhile as on 31.12.2008, a charge sheet has been submitted against the Petitioner under Sections 497/498/366/380 Indian Penal Code and the case stands despatched to the District Magistrate, Upia, for trial, this Court is of the considered opinion that having regard to the seriousness of the charges made by him against the concerned Police officials an enquiry into the same ought to be made by the Court conducting the trial of the case parallelly therewith. It is considered feasible and advisable as in course of the exercise not only the Petitioner would be available, he would also be in a position to cite his witness or witnesses if so advised to establish the correctness thereof. The police officials/personnel involved would also not be prejudiced if the enquiry is resurrected at that stage. This course of action has been directed bearing in mind the gravity of the allegations made against the police which, if true, had not only transgressed the Petitioner's fundamental right to life but also would outrightly demonstrate the high handedness of the police force impelled by considerations collateral and extraneous. Further it is essential as well, as the enquiry as ordered could not be completed to unearth the authenticity or otherwise of the imputations. As the trial is pending against . the Petitioner, no further observations is advisable at this stage.

22. The instant proceeding therefore stands closed with a direction to the learned Court below to take in its safe custody the records of the case of Doimukh PS. Case No. 13/ 2008 along with all other documents and records pertaining to the investigation of the case after preparing a detailed inventory thereof. It is further directed that the learned Court below would after the completion of the exercise forward a copy of the inventory to the Registry of this Court for its records. The learned Trial Court at, during or at the end of the trial at its convenience would conduct the enquiry as ordered and submit its report in connection therewith before this Court. It would also endeavour to expedite the trial of this case.

Let a copy of this order be furnished to the learned Public Prosecutor, Arunachal Pradesh, for being transmitted to all concerned authorities. A copy of this order be also furnished to the Judicial Magistrate, First Class, Doimukh, and the District Magistrate, Upia, for information, response and the needful.