

(2015) 09 MAN CK 0008
In the Manipur High Court
Case No : AB Nos. 28 and 29 of 2014

Laishram Haridas Singh and Others

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 24-09-2015

Acts Referred:

Arms Act, 1959 — Section 25(1-A), 27, 30
Criminal Procedure Code, 1973 (CrPC) — Section 438
Explosive Substances Act, 1908 — Section 4
Penal Code, 1860 (IPC) — Section 149, 307, 309, 325, 326

Citation : (2015) 5 GLT 501

Hon'ble Judges : N. Kotiswar Singh, J

Bench : Single Bench

Advocate : T. Rajendra, for the Appellant; S. Napoleon, P.P., Advocates for the Respondent

Final Decision : Dismissed

Judgement

N. Kotiswar Singh, J—Heard Mr. T. Rajendra Singh, learned counsel for the petitioners and Mr. S. Napoleon, learned PP for the State.

2. These two applications filed under Section 438 of the Cr.P.C., 1973 for grant of pre-arrest bail arise out of the same incident occurring on 25.10.2014 resulting in the filing of two FIRs being 248(10)2014 SJM P.S. under Section 326/307/34 IPC and 25(1-A) Arms Act and 249(10)2014 SJM P.S. under Section 326/307/34 IPC and 25(1-A) Arms Act against the two petitioners and whose applications before the learned Sessions Judge, Manipur East were dismissed by a common order dated 10.12.2014. Accordingly, these two applications were taken up and heard together and are disposed of by this common judgment and order.

3. It is the case of the petitioner, Shri Laishram Haridas Singh (hereinafter referred to as the 1st Petitioner) in Anticipatory Bail No. 28 of 2014 that at about 8 p.m. on 28.10.2014 he received an information that Laishram Somokanta who is his nephew was beaten up mercilessly by about thirty persons, near Kakwa

Bazar, whereupon, the petitioner rushed to the spot in his car where he found the said Somokanta being beaten up black and blue and was in an unconscious state. The petitioner pleaded with the crowd to stop the violence but instead of listening him the crowd turned their ire towards him. In the process, the petitioner was severely beaten up and suffered several bodily injuries with the loss of consciousness and continuous vomiting and the petitioner's car was damaged and his license gun which he was carrying, was also snatched away by the mob. Later on, the petitioner was evacuated to a private hospital where he received his treatment.

4. It is the case of the 1st petitioner that to his utter surprise on next day a team of Singjamei Police Station came to his house and made inquiries of his whereabouts. Accordingly, being apprehensive of being arrested, he approached the learned Sessions Judge, Manipur East by filing Criminal Misc. Case No. 231 of 2014 and the learned Sessions Judge passed an interim anticipatory bail order on 28.10.2014 to release him on an execution of PR bond in the event of arrest.

5. It is the case of the 1st Petitioner that after having availed interim protection, he was fully ready to cooperate with the investigation of the case, to the extent that he even went to the Singjamei Police Station for getting his statement recorded. However, the Investigating Officer avoided the 1st Petitioner on one pretext or the other and declined to record his statement in spite of making a written application to the Officer-in-Charge and SDPO, Imphal West. Unfortunately, the learned Sessions Judge, Manipur East subsequently, rejected his application and hence, being apprehensive of an eminent arrest, the 1st Petitioner has approached this Court by filing the present application, AB No. 28 of 2014.

6. Mr. T. Rajendra Singh, learned counsel for the 1st Petitioner submits that inspite of the fact that the charges made against the petitioner are concocted, he had offered full cooperation in investigation of the case during the pendency of the anticipatory bail applications before the learned Sessions Judge, Manipur East, as well as before this Court. It has been submitted that, in fact, he is the victim of assault by the mob which is clearly corroborated by the medical records. It is on record that the petitioner suffered serious injuries with lacerated wounds on the frontal regions with swelling on the right eye because of the assault by the crowd on the aforesaid day. He was admitted to the Shija Hospital and Research Institute on 25.10.2014 and was discharged only on 29.10.2014. The hospital finally diagnosed his injuries as concussion with STI, right eye conjunctival haemorrhage. Mr. Rajendra also submits that the petitioner is a licensed holder of a small arm which he carries for his own safety as the petitioner had received threat to his life from certain quarters and on the said day of occurrence the mob after assaulting the petitioner snatched his licensed gun and he did not cause any injury to anybody by use of the fire arm. He contends that the allegation that the petitioner had attempted to kill somebody else is a concocted story as he had merely gone to the place of occurrence only

to help his nephew but was instead beaten up by the mob as mentioned above.

7. Mr. Rajendra has also submitted that while rejecting the application of the 1st Petitioner by the learned Sessions Judge, Manipur East, the learned Sessions Judge had not taken into consideration the fact that the petitioner was fully cooperating with the investigation of the case by presenting himself before the I.O. of the case for recording his statement which, unfortunately, was ignored by the I.O. He also submits that after this Court also passed an interim protection order on 19.12.2014, the 1st petitioner went to the police station along with the Pradhan of the Langthabal Mantrikhong Naorem Leikai but the I.O. did not examine him. Accordingly, Mr. Rajendra submits relying on the decision of the Hon'ble Supreme Court in Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others, AIR 2011 SC 312 : (2011) 1 Crimes 109 : (2011) 1 RCR(Criminal) 126 : (2010) 12 SCALE 691 : (2011) 1 SCC 694 : (2011) 1 SCC(Cri) 514 : (2011) AIRSCW 3813 : (2010) AIRSCW 7007 : (2010) 7 Supreme 194 : (2010) 8 Supreme 353 that as the petitioner was cooperating, there is no need for custodial interrogation. Mr. Rajendra also submits that the licensed gun of the petitioner which was seized during the investigation of the case has been released on zima and as such, there is no need of custodial interrogation of the 1st petitioner at this stage. Further, relying on the decision of the Hon'ble Supreme Court in Abhilasha and Anr. v. State of Rajasthan, (2000) 10 SCC 237, Mr. Rajendra has submitted that the 1st petitioner had been on interim bail since October, 2014 and hence, at this stage after about a year of grant of interim bail, rejection of the plea for pre-arrest bail will cause serious injury to him.

8. As regards the petitioner in Anticipatory Bail No. 29 of 2014, Shri Laishram Gopeshor Singh (hereinafter referred to as the 2nd Petitioner), it is his case that on 25.10.2014 at about 8 p.m. when he received information that his nephew Laishram Somokanta and his brother L. Haridas (petitioner in A.B. No. 28 of 2014) who went to rescue the said Somokanta, had been beaten up, he rushed to the spot. When he reached the spot he found both Somokanta and his brother Haridas being beaten up black and blue and were in unconscious state. His plea to the crowd to stop the assault went unheeded. Later, he managed to carry both his nephew and his brother to the hospital with the help of some other persons. The 2nd petitioner submits that, however, to his surprise a team of Singjamei Police Station came to his house next day making inquiries about him and thus being apprehensive of being arrested, he approached the learned Sessions Judge, Manipur East by filing the Cril. Misc. No. 232 of 2014 and the learned Sessions Judge granted interim protection on 28.10.2014. The 2nd petitioner also contends that after obtaining interim protection on 28.10.2014 he was fully cooperating with the investigation by presenting himself to the police station. However, the Investigating Officer avoided examining him for reasons best known to him. Later, the said pre-arrest bail application filed by the 2nd petitioner was also dismissed by the learned Sessions Judge, Manipur East by an order dated 10.12.2014. The 2nd petitioner submits that accordingly, being apprehensive of being arrested, he has approached this Court by filing the AB

No. 29 of 2014. The 2nd petitioner has taken a similar plea that after the learned Sessions Judge, Manipur East passed the interim order dated 28.10.2014 he was fully cooperating with the investigation of the case and had presented himself before the police. It has been also stated that even after passing of the interim order by this Court on 19.12.2014 he had presented himself before the I.O. of the case accompanied by the Pradhan of the Langthabal Mantrikhong Naorem Leikai Gram Panchayat and another relative in support of which the petitioner has filed affidavits.

9. It is also the case of the 2nd petitioner that he had been also falsely implicated in the said case on fabricated charges and he has been willing and fully cooperating with the investigation of the case and never absconded. Mr. Rajendra, learned counsel for the petitioners has submitted that after both the petitioners had been granted interim protection by learned Sessions Judge, Manipur East vide order dated 28.10.2014 and thereafter by this Court vide orders dated 19.12.2014 which continues till date and as such after lapse of so many days it may not be necessary to subject them to custodial interrogation, by relying of the decision of the Hon"ble Supreme Court in Siddharam (supra) wherein the Hon"ble Supreme Court held in para 89 thereof that where the accused is fully co-operating with investigation and there is no likelihood of absconding, in that event, custodial investigation should be avoided, as reproduced herein below:

"89. It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided."

10. Learned counsel further submits that since a great ignominy and disgrace is attached to the arrest, it can lead to many serious consequences not only for the accused but also for the entire family, as most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage. Hence, custodial arrest should be avoided as mentioned in para 19 thereof, which is reproduced hereinbelow:

"90. A great ignominy, humiliation and disgrace is attached to the arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage."

11. Accordingly, Mr. Rajendra, learned counsel for the two petitioners has submitted that this is a fit case where this Court should exercise the discretion under section 438 Cr.P.C. to grant the relief considering the fact that both the petitioners had never absconded and had offered full cooperation.

12. Mr. S. Napoleon, learned P.P., has, however, vehemently objected to these

two bail applications filed by the two petitioners. As regards the first petitioner, L. Haridas Singh, Mr. Napoleon has contended that the said Haridas had initially provoked the crowd by firing two rounds with his licensed gun towards one Huidrom Kanta as a result of which the said Kanta suffered bullet injury on his right foot who had to be evacuated to the hospital for medical treatment. Because of the firing, the crowd ultimately overpowered him and snatched the small arm from him and beat him up. The said small arm, a pistol with magazine with four live ammunitions were seized by the police from the place of occurrence. In this connection, learned PP has also produced the case diary and has contended that the statements of the witnesses as well as of the complainant and Huidrom Kanta who suffered bullet injury have mentioned about the firing by the 1st petitioner which resulted in injury of Huidrom Kanta. The police also recovered one empty case as well as one projectile marked as "S&B". It is an admitted position that one pistol with magazine with four live ammunitions were seized from the place of occurrence.

13. The case of the 1st petitioner is that he was assaulted by the mob and his license gun was snatched when he went to see his nephew. On the other hand, it is the case of the Investigating Authority based on the eyewitness accounts that it was the 1st petitioner who fired two rounds resulting in injury to one Huidrom Kanta. What comes out from the records is that the petitioner is the owner of the licensed pistol and there was a firing which resulted in the injury to one person. The 1st petitioner has not explained how the firing took place and how the injury was caused to Huidrom Kanta. If the 1st petitioner claims ignorance of the firing and resultant injury which according to the eyewitnesses was caused by firing by the 1st petitioner, it certainly calls for a detail investigation into the matter as it involves the use of fire arm and injury caused by fire arm and the 1st petitioner was admittedly in possession of a fire arm. Therefore, this incident cannot be brushed aside as a minor incident, as such incident could have led to loss of life.

14. Mr. Napoleon has also submitted that in course of investigation it has come to the light of the investigating authority that the 1st petitioner was earlier involved in a number of FIR cases, i.e., FIR case No. 219(7) 2007 IPS u/ss 447/507/34 IPC and 4 Explosive Substances Act, FIR case No. 71(5) 2008 Lamlai PS u/ss 309/326 IPC & 27 Arms Act, FIR case No. 279(11) 2008 SJM PS u/ss 307/506 IPC & 30/27 Arms Act and he was also earlier detained under the National Security Act, 1980 vide order dated 21.11.2008. Accordingly, it has been contended that in view of his past records indicating involvement in a number of criminal activities, his version needs a thorough scrutiny and hence there is a need for a free and fair investigation which cannot happen if he is released on bail.

In this connection, Mr. Napoleon has also relied on the same decision of Siddharam (supra) cited by the petitioners by referring to the various factors and parameters to be taken into consideration while dealing with the anticipatory bail, as mentioned in para 112 thereof, which is reproduced hereinbelow:

"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 Penal Code, 1860 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."

Relying on the aforesaid decision, Mr. Napoleon has submitted that the nature of allegation against the first petitioner is serious and actual role played by the petitioner needs to be ascertained. It had been also submitted that his past record revealed, in course of the investigation, indicates his criminal habits and tendencies and it cannot be said that allegation against the petitioner is apparently false made with the object to injure or humiliate him by arresting him. It has been also submitted that considering his past activities there is a reasonable apprehension of his tampering with the witnesses. In any event, it cannot be said that the allegation against the petitioner is frivolous which would

warrant grant of relief sought by him.

15. As regards the 2nd petitioner, Mr. Napoleon submits that as per eye witness accounts on record, the 2nd petitioner was also responsible for firing with an unlicensed gun which led to the injury of one Trilokchand which was found to be grievous in nature. It has been alleged that after causing grievous injury to Trilokchand, by fire arm, the 2nd petitioner managed to escape from the place of occurrence and as such a proper interrogation of the 2nd petitioner is highly necessary. It has been also alleged that the 2nd petitioner was also involved and arrested earlier in connection with FIR No. 279(9)2012 LPS u/s. 307/325/34/384 IPC, 27 Arms Act Accordingly, Mr. Napoleon has submitted that considering the seriousness of the allegation against the second petitioner, he also does not deserve any relief from this Court.

16. Mr. Napoleon further submits that these two petitions are not maintainable inasmuch as these have been filed after the rejection of the earlier applications by the learned Sessions Judge, Manipur East and there has been no change in the circumstances or any new further development has taken place, to which Mr. Rajendra, learned counsel for the petitioner submits that the filing of second bail application before this Court is not barred and is maintainable relying on the decisions of the Hon"ble Supreme Court in Babu Singh and Others Vs. State of U.P., AIR 1978 SC 527 : (1978) CriLJ 651 : (1978) 1 SCC 579 : (1978) SCC(Cri) 133 : (1978) 2 SCR 777 and Runu Roy Vs. State of Assam, (2005) 2 GLT 566 . In para 2 of Babu Singh (supra), the Hon"ble Supreme Court held that an order refusing an application for bail does not necessarily preclude another, on a later occasion, by giving more materials based on further developments and different considerations. The Hon"ble Gauhati High Court in Runu (supra) held that the second application under Section 438 Cr.P.C. would be maintainable.

17. Heard the learned counsel for the parties and perused the materials on record.

18. From the pleadings and records produced by the learned P.P. what can be discerned is that there was a violent incident on 25.10.2014 involving the petitioners as well as some other local persons at Kakwa Bazar. The records reveal that a pistol with live ammunitions and empty cash and projectile were recovered from the place of occurrence. The 1st petitioner himself admits that he went to the place of occurrence with his licensed pistol which was later recovered and seized from the place of occurrence. While it is the case of the 1st petitioner that the said fire arm was a licensed gun and was snatched from him by the mob from the place of occurrence, it is the allegation against him that he had fired two rounds from the small arm which resulted in injury to one person namely Huidrom Kanta. Thus, the use of the small fire arm and the injury caused are clearly indicated. There is also indication in the case diary that the 2nd petitioner also used a fire arm and another person namely, Trilokchand also received bullet injury. As to who were responsible for causing the bullet injuries and under what circumstances the firing took place can be ascertained properly only after a

thorough investigation which would require a proper interrogation of the petitioners as the 1st petitioner is admittedly the owner of a pistol and the 2nd petitioner has been alleged to have used another fire arm. Though the 2nd petitioner has denied use of any such fire arm, some of the eye witnesses who were examined by the police have alleged that the 2nd petitioner had fired from a small arm which resulted in injury to another person. As to who were responsible for the fire from the small arms and how the two persons received bullet injuries, requires a proper examination of the two petitioners in view of the highly incriminating materials against both of them which have emerged in course of the investigation. Since the incident involves use of fire arms in a public place in a bazaar area and injury caused to two persons, the matter cannot be considered lightly and it ought to be investigated by the investigating authority thoroughly to ascertain what actually had really transpired leading to the gun shot injuries. As mentioned above, since the allegations are primarily targeted against the two petitioners in a public place, a proper investigation is sine quo non for arriving at a proper finding.

19. The contention of the learned PP that both the petitioners were in the habit of being involved in criminal cases cannot be lightly shrugged off. They have been shown to be involved and were arrested in connection with other FIR cases. This Court after having gone through the records produced by the learned PP and also the pleadings is of the view that no hurdle should be placed before the investigating authority to enable them to proceed in a fair and free manner without any hindrance or impediment which may be created by the grant of relief to the petitioners claimed by them.

20. As regards the contention of Mr. T. Rajendra, learned counsel for the petitioner that after having granted interim relief which has lasted for almost about a year, it may not be appropriate at this juncture to deny the relief claimed, it may be stated that in the present case, in view of the peculiar facts as discussed above and the gravity and seriousness of the charges against both the petitioners involving use of fire arms in a public place, this Court is of the view that that the said consideration of existence of interim orders should not come in the way of the investigating authority to have a free hand in investigating the matter. Use of fire arms in a public place certainly creates an alarming situation in the mind of the public and there must not be impression amongst the public that anybody can take law into their own hands. Therefore, failure to properly investigate the matter may prejudicially affect the confidence of the public in the efficacy of the rule of law.

Accordingly, considering the nature of the case, gravity of the allegations which involve use of fire arms which could have proved fatal and having weighed carefully the importance of personal liberties qua the societal demand for orderliness and proper investigation of the crimes involved, this Court is not inclined to grant the reliefs claimed by the petitioner.

21. Accordingly, for the reasons discussed above, these two applications are

rejected.

However, it may be also observed that mere rejection of the applications filed by the petitioners under Section 438 Cr.P.C. need not ipso facto lead to the arrest of the petitioners and the investigating authorities are expected to apply their mind carefully as to whether the custodial interrogation of the petitioners is really necessary or not. It is only after having satisfied that the custodial interrogation of the petitioners would be highly necessary, the authority may resort to arrest, which must find reflection in the case diary to obviate any allegation of undue harassment at the hands of the investigating authority.