

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
BA(SH) No. 39 of 2013

19.04.13

Heard Mr. TT Diengdoh, the learned senior counsel assisted by Mr. K Baruah, the learned counsel for the petitioner.

Bail application will be considered after perusal of CD.

Call for CD as well as Lower Court case record.

List this matter on 26.04.13.

JUDGE

V. Lyndem.

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
Crl. Revn. P.(SH) No. 63 of 2012

19.04.13

Heard Mr. GMT Blah, the learned counsel for the petitioner who submits that Mr. GS Massar, the senior learned counsel is undergoing medical check-up, as such he is unable to conduct the case and prayed that the matter may be fixed on 24.04.13.

Prayer is allowed.

Mr. R. Gurung, the learned state counsel is present.

List it accordingly.

JUDGE

V. Lyndem.

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
AB(SH) No. 16 of 2013

19.04.13

Heard Mr. D. Thakur, the learned counsel for the petitioner who submits that interim bail passed vide order dated 21.02.13 may be made absolute.

The IO Mr. GK Sangma is present along with CD.

Also heard Mr. S Sen Gupta, the learned PP who submits that if bail is at all granted, conditions may be imposed, that the petitioner should appear before the IO concerned.

After hearing the submissions advanced by the learned counsel for both the parties, I am of the considered view that the petitioner is allowed to go on pre-arrest bail for a sum of Rs. 30,000/- with one surety of the like amount on the following conditions.

i) The petitioner shall appear before the IO concerned in connection with Nongstoin PS Case No. 113 (12) 12 under Section 420 IPC thrice in a week w.e.f. 22.04.13 for two weeks; and thereafter as and when necessary by the IO.

ii) The petitioner shall cooperate with the IO in all respect for the purpose of investigation.

iii) The petitioner shall not interfere with the investigation or tamper with any evidence.

Accordingly, bail application is allowed and stands disposed of.

The IO is directed to take back the CD immediately.

JUDGE

V. Lyndem.

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
AB(SH) No. 34 of 2013

19.04.13

Heard Mr. BK Deb Roy, the learned counsel for the petitioner who submits that since FIR has been lodged by the BDO, Ranikor C&RD Block, the petitioner is of the apprehension that he may be arrested at any point of time, though he is in interim bail. The learned counsel further contended that the petitioner is in no way involved in the case and he is a local resident, as such there is no scope of absconding. Besides that, the petitioner is ready to cooperate with the investigating agency in all respect.

Mr. R. Gurung, the learned PP is appearing before the Court along with the CD submits that custody of the accused is necessary for obtaining specimen signature.

After hearing the submissions advanced by the learned counsel, I could not satisfy myself that custody is necessary only for obtaining specimen signature rather I am of the considered view that specimen signature can be obtained by the IO even without any custody. Moreover, I could not find anything serious on record to reject pre-arrest bail. Hence, pre-arrest bail is hereby considered and allowed.

The IO concerned is directed that in the event of arrest of the petitioner, he is to be release on bail for a sum of Rs. 30,000/- with one surety of the like amount on the following conditions.

- i) The petitioner shall appear before the IO concerned w.e.f. 22.04.13 for 1(one) week everyday and twice in a week for another 2(two) weeks, thereafter, as and when require by the IO.
- ii) The petitioner shall not interfere with the investigation or tamper with any evidence and he should cooperate with the investigating agency.
- iii) The petitioner shall not leave the jurisdiction of the Court where he resides without prior permission from the Court.

With these observations and directions, this instant bail application is allowed and stands disposed of.

The learned PP is directed to send down back the CD to the IO concerned.

JUDGE

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
Crl. Petn.(SH) No. 22 of 2013

19.04.13

Heard Mr. AK Bhuyan, the learned counsel for the petitioner who submits that there was a misunderstanding between the petitioner Shri. Gopa Kumar and complainant Ms. Aporajita D Sukhlain. As a result, an FIR was lodged by the complainant on 23.01.12 and the police has registered the case General Dairy Entry No. 756 dated 23.01.12 under Section 354 IPC as Shillong Sadar P.C. Case No. 14(1)/2012. The learned counsel further contended that after filing an FIR, the complainant realised the mistake and both the complainant and the petitioner settled their disputes amicably and further wrote a letter addressed to O/c Shillong Sadar Police Station vide letter dated 24.01.12 i.e. the next day after the FIR, wherein she categorically stated that she is not interested to proceed with the case.

The learned counsel has drawn my attention to the Deed of Compromise between the parties which are at Annexure-III (Page-12) and the said Section is non-compoundable as for Section 320 CrPC but the Court has the power under Section 482 CrPC for quashing the proceeding.

On the other hand, Mrs. G. Shylla, the learned Addl. PP submits that the Court may pass an order as deem fit and proper.

Mr. D. Das, the learned counsel appearing on behalf of the complainant endorsed the submissions advanced by the learned counsel for the petitioner and prayed that the FIR dated 23.01.12 may be quashed as the parties have already settled the matter amicably on their own free will.

After hearing the submissions advanced by the learned counsel as referred to above and on going through the FIR dated 23.01.12 as well as the letter dated 24.01.13 and Deed of Compromise dated 25.01.12, I noticed that complainant has prayed to close the proceeding and to treat the FIR dated 23.01.12 as withdrawn. Therefore, I do not see any reason of doubt in my mind. It is settled principle of law under Section 482 CrPC, that the Court has been empowered to use the said provision to prevent abuse of the process of law. Since the parties have already settled the matter amicably and the gravity of offence is not so serious, I am of the considered view that it is a fit case where Section 482 CrPC can be invoked; otherwise parties will be forced to go on prolonged litigation against their will.

Accordingly, by invoking power under Section 482 CrPC, I hereby quash the FIR dated 23.01.12 and PS Case No. 14(1)/2012 under Section 354 and the petition is allowed and stands disposed of.

Registry is directed to furnish a copy of this order to the learned counsels for the parties within 48 hours.

JUDGE

V. Lyndem.

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
Crl. Petn. (SH) No. 32 of 2013

19.04.13

None appears for the petitioners.

Since the order dated 2.04.13 above, wherein it is noted that "State of Meghalaya is involved, let this matter be placed before the Hon'ble Chief Justice for appropriate order". However, I do not see any order of the Hon'ble Chief Justice of Guahati High Court.

Mr. S Sen Gupata, the learned Addl. PP is present.

Registry is directed to enquire into the matter and check whether this case has come on appropriate transfer or not and then to be placed before the Court.

JUDGE

V. Lyndem.

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
Crl. Petn. (SH) No. 51 of 2012

19.04.13

List this matter after 3(three) weeks as prayed for by Mr. R Debnath,
the learned CGC.

Mr. K. Khan, the learned counsel for the petitioner is present.

List this case on 10.05.13.

JUDGE

V. Lyndem.

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
Crl. Revn. P. (SH) No. 33 of 2013

19.04.13

Heard Mr. K. Khan, the learned counsel for the petitioner who submits that the accused Smti. Rita Kurbah was arrested in connection with Umiam P.S. Case No. 25(3) of 2013 under Section 363/34 IPC. The learned counsel further contends that Section 363 IPC is bailable, so she should have been released on bail but unfortunately, the learned Addl. District Magistrate, Ri Bhoi District, Nongpoh has mis-concept the law by rejecting the bail application vide order dated 9.4.13 without any reason. Hence compelled the petitioner to approach this Court on behalf of the detainee.

Also Heard Mr. S Sen Gupta, the learned Addl. PP who submits that since Section 363 IPC is bailable, he has no submission before the Court and the Court may pass necessary order as deem fit and proper.

I have perused the order dated 9.4.13 at Page-1 of the petition placed before me, I found that bail application has been rejected on the ground that statements of the other accused are yet to be recorded. Moreover, it is too early to release the accused person at that stage. Section 436 CrPC made a provision for granting bail in case of bailable offence. Where in its bare perusal of Section 436 CrPC, it is crystal clear to me that the person has been arrested in connection with bailable offence and she is ready to furnish surety, the Court is bound to grant bail, the word shall have been used under Section 436 CrPC for granting bail. Hence, the Court has no discretion to grant or not to grant bail but the Court is bound by law to grant bail under Section 436 CrPC for bailable offence.

Further, the provision also made, even if a person is not in position to furnish surety, then he/she is to be discharged on executing a bond without surety for his/her appearance. Therefore, Section 436 CrPC made bail as a matter of right in case of bailable offence. On perusal of Section 363 IPC, it appears that Section is cognizable, bailable and non-compoundable. If it is so, it definitely a case of bailable and the accused is entitled to bail.

The learned Addl. District Magistrate, Ri Bhoi District, Nongpoh ought to have been consulted with the Criminal Procedure Code as well as IPC before passing the impugned order. Law does not permit us to do as we like but we are bound by law under the Constitution of India. The

learned Addl. District Magistrate must read the books in future before rejecting or accepting bail application.

Accordingly, the learned Addl. District Magistrate, Ri Bhoi District, Nongpoh is directed to consider bail application of the accused immediately as and when it is placed before him in accordance with law as discussed above.

With these observation and directions, the impugned order dated 9.4.13 is hereby set aside and the petition is allowed and stands disposed of.

The party is directed to move the bail application along with a copy of this order.

JUDGE

V. Lyndem.