

Serial No. 14
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

A.B No. 10 of 2021

Date of Decision: 07.10.2021

Mr. Hammed Balogun Vs. State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. R. Gurung, Adv.
For the Respondent(s) : Mr. H. Abraham, 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. The Petitioner Mr. Hammed Balogun, a Nigerian national residing at Demthring, Shillong with his wife and child has approached this Court with an application u/s 438 Cr.PC praying for grant of pre-arrest bail in connection with Dawki PS Case No. 16(6)2021.

2. It is the case of the Petitioner that he had received a notice u/s 41 Cr.PC in connection with the said Dawki PS Case (supra) and had accordingly reported before the Dawki PS on 16.07.2021. After being questioned, he was allowed to leave the police station in the evening but was again directed to report before the said police station after three days and was threatened that next time he would be arrested.

3. The Petitioner has further stated that he had been willingly cooperating with the investigation in all possible manner but due to the threat of arrest, he is apprehensive that he may be falsely implicated and arrested in the said Dawki PS case (supra).

4. Again, it is stated that the Petitioner is a resident of Demthring, Shillong and all his documents are in the custody of the court at Shillong in connection

with Sadar PS Case No. 93(5)2012 and as such, there is no question of absconding or fleeing from justice.

5. Mr. R. Gurung, learned counsel has submitted that the Petitioner was also involved in a case on an allegation that his visa was forged and that the trial in the said case is going on, however, he was since granted bail in the said case but all his documents such as passport and visa are in the custody of the Hon'ble Court.

6. It is also submitted that the Petitioner have got married at Shillong and as such, being a foreigner there is no scope of proper employment for him to sustain his family, for which he has kept himself engaged by helping fellow Nigerians who are visiting Shillong with travel itinerary, etc. and is getting paid for his services. In this manner, he had also helped one fellow Nigerian named Michael Okpeaifoh who had gone to Dawki. What the said Michael Okpeaifoh did at Dawki is not within his knowledge and has no connection with him and as such he cannot be implicated in any police case against Michael Okpeaifoh.

7. However, because of the fact that the police had threatened to arrest him, therefore he is very apprehensive that he may be arrested for which he has approached this Court with this instant application. It is again submitted that the Petitioner having his family at Shillong is not likely to abscond also considering the fact that all his related travel documents are in the custody of the court, therefore, there is no question of absconding.

8. Mr. H. Abraham, learned GA submitting on behalf of the State Respondent has taken this Court to the entries in the case diary which was duly produced before this Court and has further submitted that the conduct of the Petitioner herein in not responding to the direction of the police to appear before them, the second time he was called after having appeared before the Police on receipt of the notice u/s 41 Cr.PC and also the fact that he had received money from the wife of the said Michael Okpeaifoh who is the main accused in the said Dawki PS Case No. 16(6)2021 would make him liable for prosecution under the relevant provisions of law and as such, it is prayed that

this application may not be allowed.

9. Having heard the learned counsel for the parties and on appreciation of the submissions made, what is seen is that a case u/s 41(a) of the Foreigners Act was duly registered against the said Michael Okpeaifoh, however, Michael Okpeaifoh was subsequently released on bail and investigation is still going on.

10. The fact that the Petitioner herein is known to Mr. Michael Okpeaifoh and that he has also admitted that he had helped him would apparently make him apprehensive of arrest in connection with the said Dawki PS case (supra). This constitute a reasonable apprehension of arrest for which he is entitled to approach the competent court of jurisdiction for relief.

11. In the case of “*Siddharam Satlinggappa Mhetre v. State of Maharashtra*”, (2011) 1 SCC, 694, the Supreme Court laying down some guidelines as far as anticipatory bail is concerned, at paragraph 112, has held as follows: -

“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 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 the 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”.

12. While applying the above to the case of the Petitioner, it is apparent that he is not likely to abscond or flee from justice since he has his family at Shillong and that he has cooperated with the police by responding to the first notice issued to him u/s 41A Cr.PC also reflect on his antecedent. The nature and gravity of the allegation is also such that a heinous offence has not been committed by the Petitioner herein. This being the case, this Court is therefore inclined to allow the prayer of the Petitioner.

13. Accordingly, it is hereby directed that incase the Petitioner is arrested, he is to be enlarged on bail on the following conditions: -

- (i) That he shall not abscond or tamper with the evidence or witnesses;
- (ii) That he shall not leave the jurisdiction of India without prior permission of the I.O or the court concerned; and
- (iii) That he shall produce a personal bond of ₹ 20,000/- with one surety of like amount.

14. The Registry is directed to return the case diary.

15. Matter disposed of. No cost.

Judge

Meghalaya

07.10.2021

“N. Swer, Stenographer”