

Tripura High Court

Jawhar Miah vs The State Of Tripura Represented ... on 4 May, 2022

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HIGH COURT OF TRIPURA  
AGARTALA  
AB 21 of 2022

Jawhar Miah S/O- Ali Noaj, R/O- Tamsabari Uttar Para,  
Ward No 7, P.S- Sonamura, District- Sepahijala, Tripura.

-----Applicant(s)

Versus

The State of Tripura represented by Ld. PP, High Court  
of Tripura.

-----Respondent(s)

BEFORE

HON'BLE MR.JUSTICE S.G.CHATTOPADHYAY

For Applicant(s) : Ms. P.Roy Barman, Sr. Adv.  
Mr. S.Bhattacharjee, Adv.  
Mr. K.Nath, Adv.

For Respondent(s) : Mr. Ratan Datta, PP.  
Mr. S.Ghosh, Addl.PP

ORDER

04.05.2022 [1] This is an application under Section 438 of the Code of Criminal Procedure, 1973 for granting pre-arrest bail to the applicant in the event of his registered under Sections 420, 468, 469, 471 read with Section 34 IPC.

[2] The case has been registered against the accused applicant and 2 other accused on the basis of the written FIR lodged by Sri Rajat Ray, an advocate and Notary Public. The informant lodged the said FIR with the Officer in charge of West Agartala P.S. on 06.03.2022 alleging, inter alia, that the accused applicant in connivance with the other two accused forged his signature on a lease agreement and he also used a fake seal in his name on the said document.

[3] Based on his FIR, Sonamura P.S. case no. 2022 SNM 023 under Sections 420, 468, 469, 471 read with Section 34 IPC was registered and the case was taken up for investigation. [4] Apprehending arrest in the case accused Sunil Chandra Sarkar and Robel Hossain applied for pre arrest bail in the court of the Sessions Judge in Sepahijala judicial district. By an order dated 07/04/2022 the learned Sessions Judge allowed the said bail application on the ground that

prosecution could not make out any prima facie case against those two accused. While allowing their bail application the learned Sessions Judge imposed certain conditions on them. One of those conditions is that they would not leave the state without prior permission of the IO.

[5] The present accused petitioner namely Jawhar Miah who is the author of the alleged lease deed also filed similar application seeking pre arrest bail in the court of the Sessions Judge which was registered as BA No.13 of 2022. The learned Sessions Judge perused the case diary and viewed that in view of the incriminating materials available in the case diary, accused Jawhar Miah was not entitled to anticipatory bail. Learned Sessions judge accordingly rejected the bail application by order dated 01.04.2022 in BA 13 of 2022. Therefore, accused petitioner Jawhar Miah has approached this court by filing the present petition under Section 438 Cr.P.C.

[6] Heard Mr. P.Roy Barman, learned Sr. Advocate appearing along with Mr. S.Bhattacharjee and Mr. K.Nath, advocates for the petitioner. Heard Mr. Ratan Datta, learned PP appearing along with Mr. S.Ghosh, learned Addl. PP for the state respondent.

[7] Mr.P.Roy Barman, learned Sr. Advocate appearing along with Mr. S.Bhattacharjee and Mr.K.Nath, advocates for the petitioner contends that question of forgery is irrelevant because the executants of the alleged lease agreement have also been made accused in this case and they have admitted that the present petitioner authored the lease agreement between them pursuant to their request. Therefore, question of forging any document is totally irrelevant. It is contended by learned counsel that the allegation of forging the signature of the informant on the lease agreement and using a fake seal in his name is subject to verification and should not be arrested and jailed without doing such verification. Counsel contends that admittedly accused is a licensed deed writer. He duly submitted his license to the competent authority for renewal and the same is pending for consideration of the renewing authority. In these circumstances, the accused in order to earn his livelihood authored the questioned deed which cannot be treated as an offence since the executants of the deed have admitted the said deed to be a genuine document. Situated thus, no malicious intention can be attributed to the accused. Counsel submits that accused is ready to face interrogation during the investigation of the case and he will extend the fullest cooperation to the investigating agency. Counsel, therefore, urges for his release on pre arrest bail on any condition to protect him from unnecessary arrest and detention.

[8] Mr.Ratan Datta, learned PP appearing along with Mr. S. Ghosh, learned Addl. PP for the state respondent vehemently opposes the bail application. Learned PP contends that the FIR has been lodged by a member of the bar who has alleged that his signature has been forged by the accused and a fake official seal in his name has also been used by the accused to show that the said lease agreement has been notarised. Counsel submits that this is a serious offence which can not be taken lightly. Learned PP refers to the statements of various witnesses recorded by the IO to show that many complaints have been received against accused Jawhar Miah to the effect that he has engaged himself in manufacturing fake voter ID cards, Aadhar cards, survival certificates etc using fake official seal and signatures of various government officials. Learned PP has also referred to various instances where such Aadhar cards, voter ID cards and survival certificate etc have been manufactured by the accused petitioner and sold. Learned PP contends that in view of the

seriousness and magnitude of the offence the investigating agency has under taken a deeper investigation in the case to book the other members of the racket which is operating across the state. Counsel submits that release of the accused on pre arrest bail will frustrate the investigation of the case and seriously affect public interest.

[9] Learned PP has also referred to a report of the Addl. SDM, Sonamura which indicates that during verification of the documents of the executants of a sale deed in his office, it was detected that the Aadhar Card and Voter ID card of the said executants of the deed were fake. On query they told the officer that those documents were manufactured by the present accused petitioner. It has been argued by the PP that effective interrogation of the suspect will have a tremendous advantage in disinterring useful informations for the purpose of the investigation of the case. Once the accused is protected and insulated by a pre arrest bail, the investigating agency will loose the chance of such effective interrogation. To nourish his contention counsel has relied on the decision of the Supreme Court in the case of STATE REPRESENTED BY CBI VS. ANIL SHARMA reported in (1997) 7 SCC 187 wherein the apex court has held as under:

"6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders."

[10] Counsel has also contended that in the present case arrest of the accused is absolutely necessary to discover the material facts by a thorough interrogation of the accused which would be impossible if the accused is set free during the investigation of the case. In support of his contention counsel has relied on the decision of the apex court in ADRI DHARAN DAS Versus. STATE OF W.B. reported in (2005) 4 SCC 303 which reads as under:

"19. Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the

victim of the crime, to prevent his disappearance, to maintain law and order in the locality. For these or other reasons, arrest may become an inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. The role of the investigator is well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily will not interfere with the investigation of a crime or with the arrest of accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code."

[11] Under the premises aforesaid, Mr.Ratan Datta, learned PP, urges the court for rejecting the bail application of the accused.

[12] Considered the submissions made by the counsel representing the parties.

Perused the entire record including the case diary.

[13] It is true that a member of the bar who is also a notary public has brought serious allegations against the accused. In the course of the investigation, the IO also seems to have collected information with regard to similar nature of offences allegedly committed by the accused petitioner which needs thorough investigation to save the innocent people from cheating and forgery. The IO has collected various fake voter ID cards, Aadhar cards and survival certificates which has allegedly been manufactured by the petitioner for earning money by cheating people. Accused alone cannot commit such offence. Involvement of others including government officials cannot be ruled out. Therefore, the investigating agency should be given a free hand to carry out a deeper investigation into the offence. Therefore, this court is of the view that release of the accused on pre-arrest bail will spoil a free and fair investigation of the case.

[14] In view of the nature of the offence, its impact on society, the prima facie materials available against the accused and the chance of his tampering with evidence and influencing the witnesses, this court is not inclined to grant pre- arrest bail to the accused at this stage. Resultantly his bail application stands rejected and the case is disposed of.

Pending application(s), if any, shall also stand disposed of.

Return the CD.

JUDGE Saikat Sarma, PS-II