

# Thokchom Thai Singh vs The Officer-In-Charge on 15 April, 2021

**Author: M.V. Muralidaran**

**Bench: M.V. Muralidaran**

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IN THE HIGH COURT OF MANIPUR

AT IMPHAL

AB No.2 of 2021

Thokchom Thai Singh, aged about 23 years, S/o Th. Sukumar Singh, resident of Malom Tuliha! Makha Leikai, P.O. Tuliha!, P.S. Nambol, District Impha! West, Manipur.

..... Petitioner/s

- Versus -

The Officer-in-Charge, Women Police Station, Kakching, Kakching District, Manipur.

...Respondent/s

With AB No.3 of 2021 Namoijam Saheli Devi, aged about 19 years, W/o O. Rabi Singh, resident of Kadompokpi Maning Leikai, P.O. Tuliha!, P.S. Nambol, District Impha! West, Manipur-795134.

..... Petitioner/s

- Versus -

The Officer-in-Charge, Women Police Station, Kakching, Kakching District, Manipur.

...Respondent/s

BEFORE

HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Petitioner/s : Mr. N. Surendrajit, Advocate  
For the Respondent/s : Mr. H. Samarjit, PP  
Date of hearing & Reserved: 22.03.2021

Judgment & Order : 15.04.2021

Anticipatory Bail Nos.2 and 3 of 2021

JUDGMENT & ORDER  
(CAV)

[1] These petitions have been filed by the petitioners under Section 438

Cr.P.C. seeking to grant anticipatory bail in connection with FIR Case No.76(10)2020 on the file of KCG Police Station registered under Section 376, 366-A, 417 IPC and Section 4 of POCSO Act.

[2] Since both the petitions arise out of the same FIR, they were heard together and disposed of by this common order.

[3] The case of the prosecution is that on 31.10.2020 at 4.10 p.m., the complainant Khetrimeyung Chaoba Singh reported to the officer-in-charge of Kakching Police Station that on 24.10.2020 at around 3.45 p.m., his minor daughter Jusiepriya Kshetrimeyung, aged 15 years, was called out from his house by one Naorem Prasanta Singh of Malom Tuliha Makha Leikai and she was kidnapped to be his wife, thereby Prasanta Singh committed sexual offence without her consent. The further case of the prosecution is that with the help of his friends namely (1) Oinam Rakesh Singh and (2) Thokchom Bonthai Singh, the accused Naorem Prasanta Singh kidnapped the victim. According to the prosecution, on 24.10.2020 night, the accused and the victim stayed at the house of Oinam Rakesh Singh of Kodompokpi Maning Leikai, where the victim narrated that she was kidnapped by the accused Anticipatory Bail Nos.2 and 3 of 2021 Prasanta Singh to Namoiyam Saheli Devi. However, the said Namoiyam Saheli Devi did not hear the same. According to the prosecution, on examination, the victim stated that she never consented for physical relation. [4] The case of the petitioner in Anticipatory Bail No.2 of 2021 is that he accompanied one of his friends for a drive to Kakching side on 24.10.2020 where his girl friend resides. After reaching Kakching, his friend called out his girl friend for having a cup of coffee. The said girl came out and they had coffee and talked for a while. Thereafter, they came out and as proposed by the said girl, she was eloped with his friend. On the way back home, he was dropped at his residence and requested by his friend to inform his parents about the elopement.

[5] The petitioner in Anticipatory Bail No.3 of 2021 stated that she is the sister-in-law of Rakesh Singh, who is a friend of accused Naorem Prasanta Singh. According to the petitioner, on 24.10.2020 at about 6.00 p.m., the accused Prasanta Singh came to her house along with one girl and requested her brother-in-law and mother-in-law for staying that night by saying that they were eloped. As requested, they were allowed to stay that night at the residence of the petitioner and the petitioner gave some cloths to the said girl for changing her dress as a common practice.

Anticipatory Bail Nos.2 and 3 of 2021 [6] The respondent State filed affidavit-in-opposition stating that on preliminary interrogation, the accused Prasanta Singh admitted that he had been known with the victim through face book since three months back and had love affairs and he eloped with her on 24.10.2020 and had physical relation. It is stated that the victim was produced before the CWC, Kakching for necessary action and for recording her statement. On further interrogation of the accused Prasanta Singh, it reveals that he along with his two friends were present on 24.10.2020 and his friends helped him during the whole journey after the commission of the crime and also spent the whole night at the residence of his colleague at Mekola and after his act of intimacy to her, both left for his residence the next day. [7] It is further stated in the affidavit-in-opposition that on examination, the victim stated that she willingly gone with the accused just to show Kakching area since the accused Prasanta Singh being her face book friend. She further stated that she was kidnapped by Prasanta Singh and brought forcibly in a car towards Khongjom with the help of his friends, who were later identified as Oinam Rakesh Singh and Thockchom Bonthai Singh. The victim further stated that they stayed the night at the house of Oinam Rakesh Singh, where she narrated to the woman of the house, later identified as Namoiyam Saheli Devi that it was not elopement but she was kidnapped. It is stated that on interrogation of Oinam Rakesh Singh, he stated that he Anticipatory Bail Nos.2 and 3 of 2021 along with Thockchom Bonthai Singh and the accused Prasanta Singh participated in the commission of the crime. Oinam Rakesh Singh also admitted that he made arrangement for the night stay at his house and his sister-in-law Namoiyam Saheli Devi assisted the victim to change her cloths. According to the respondent State, the investigation of the case is in full swing and in good progress and thus, prayed for dismissal of the petitions. [8] The learned counsel for the petitioners submitted that the names of the petitioners do not appear in the FIR, however, the police personnel of Nambol Police Station came to the house of the petitioner Thokchom Thai Singh on 27.11.2020 at about 2.30 p.m. for causing arrest. Since the petitioner was not at his residence, his father was asked to ensure the appearance of the petitioner before the investigating officer on 28.11.2020 at 10.30 a.m. [9] The learned counsel for the petitioners further submitted that similarly the police personnel of Nambol Police Station came to the house of the petitioner Namoiyam Saheli Devi on 2.12.2020 at about 3.00 p.m. for causing arrest of her and since she was not at her residence, her in-laws were asked to ensure the appearance of the petitioner before the investigating officer on 3.12.2020 at 10.30 a.m. Anticipatory Bail Nos.2 and 3 of 2021 [10] The learned counsel for the petitioners then submitted that the petitioners are innocent and they were no way related to the crime. In fact, the petitioner Thokchom Thai Singh was just accompanied with the said accused Prasanta Singh on the day of elopement and he was dropped at his residence by them and they went to the house of one of the friends of the accused for staying the night on 24.10.2020. He would submit that as far as the petitioner Namoiyam Saheli Devi is concerned, she just gave some cloths to the eloped girl for changing her dress.

[11] The learned counsel next submitted that the petitioners are not at all involved in the alleged FIR Case and that there is no material on record to show that the petitioners involved in the commission of the crime alleged in the FIR. According to the learned counsel, the petitioners are law abiding citizens and they are always ready and willing to co-operate with the investigating officer of the case and that there is no question of hampering or tampering the prosecution witnesses and/or evidence when they are released on bail. The learned counsel further submitted that based on the statement of the victim, the respondent police trying to implicate the petitioners in this case.

[12] Per contra, the learned Additional Public Prosecutor submitted that the investigation so far done reveals that the petitioners had indeed participated in the commission of the crime and since the investigation is in Anticipatory Bail Nos.2 and 3 of 2021 full swing, the petitioners cannot be granted anticipatory bail. He would submit that in fact the petitioner Thokchom Thai Singh approached the Sessions Court and filed anticipatory bail petition and the same was rejected on 04.12.2020. The learned Additional Public Prosecutor further submitted since the allegations levelled against the petitioners are serious in nature, they are not entitled to get the anticipatory bail and therefore, prayed for dismissal of the petitions.

[13] This Court considered the submissions made by the learned counsel for the parties and also perused the materials available on record. [14] According to the petitioner in Anticipatory Bail No.2 of 2021, he just accompanied with the main accused on the date of the alleged elopement by the accused Prasanta Singh with the victim. Similarly, the petitioner in Anticipatory Bail No.3 of 2021 contends that she just gave some cloths to the eloped girl for changing her dress as a common practice on the night of 24.10.2020.

[15] The prosecution contends that this is not a case of elopement, but it is a case of kidnap by the accused Prasanta Singh, for which the petitioners herein and one Oinam Rakesh Singh helped him.

[16] At this juncture, it is worth to extract certain averments set out in the affidavit-in-opposition, which read as under:

Anticipatory Bail Nos.2 and 3 of 2021 "On the other hand the victim stated that she willing gone with the accused just to show Kakching area since he being her face book friend and had never met face to face before and she also stated that she was kidnapped by Naorem Prasanta Singh (20) S/o N.Bagirath Singh of Malom Tuliha Makha Leikai and brought forcibly in a car towards Khongjom with the help of the accused friends who were later identified/disclosed by the accused as that of (1) Oinam Rakesh Singh (24) S/o O.Biramani Singh of Kodompokpi Maning Leikai, PO/PS, Nambol District, Imphal West and (2) Thocchom Bonthai Singh (24) S/o Th.Surkumar Singh of Malom Tuliha Makha Leikai and thereafter the vehicle proceeded towards Maitram/Kodompokpi. She further stated that they stayed the night at the house of Oinam Rakesh Singh (24) S/o Biramani Singh of Kodompikpi Maning Leikai, therein she narrated to the woman of the house (later identified as Namoijam Saheli Devi W/o O.Rabi Singh, sister in law of Oinam Rakesh Singh (24) who is a friend of main accused Naorem Prasanta Singh in the case) that it was not elopement but she was kidnapped and it was carried out without her consent but the woman did not hear to her and instead cover up the crime. That she never gives her consent of physical relation."

[17] Thus, it is the case of the respondent State that the petitioner Thokchom Thai Singh and Oinam Rakesh Singh helped the main accused Prasanta Singh for the commission of the offence and despite the narration of the fact that the victim was not eloped with the main accused and she was Anticipatory Bail Nos.2 and 3 of 2021

kidnapped by the accused Prasanta Singh, the petitioner Namoijam Saheli Devi unheard the same and screened the offence.

[18] The statement of the victim that she willingly gone with the main accused Prasanta Singh just to show Kakching area as the accused Prasanta Singh being her face book friend and she was kidnapped by the accused Prasanta Singh with the help of his two friends cannot now be gone into since the same would be established during trial. Earlier, the petitioner Thokchom Thai Singh approached the learned Sessions Judge and the learned Sessions Judge dismissed the anticipatory bail application taking note of the gravity of the offence and relying on the statement of the victim. But the learned Sessions Judge has failed to see the allegations levelled against the said petitioner.

[19] It is contended on behalf of the petitioners that elopement and marriage is the common practice of the Manipuri Hindus in the State of Manipur. As a practice, on the date of elopement, the eloped girl was not taken to the house of the eloping boy, but was kept at the house of a friend or relative and informed the parents of the eloping boy by such friend or relative. Thereafter, the parents of the eloping boy used to give formal information of the elopement (Nupi Haidokpa) in the morning of the next day of the elopement to the parents of eloping girl and make Anticipatory Bail Nos.2 and 3 of 2021 settlement/arrangement of the marriage. This Court finds that the said aspect of the matter now cannot be gone into in these petitions. [20] Admittedly, the petitioners were not named in the FIR and based on the statement given by the accused Prasanta Singh, the investigating office went to the houses of the petitioners and asked them to appear before the Police Station on the respective dated indicated above. It is the apprehension of the petitioners that at any time the investigating officer will arrest them and they were no way in connection with the alleged commission of the crime. It is also the contention of the petitioners that their personal liberty has been very much affected. It is contended that personal liberty is a very precious fundamental right and it would be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case.

[21] The provision of anticipatory bail enshrined in Section 438 of Cr.P.C. is conceptualized under Article 21 of the Constitution of India. It relates to personal liberty of a particular person and such a provision calls for liberal interpretation of Section 438 of Cr.P.C. in the light of Article 21 of the Constitution of India.

[22] Section 438 of Cr.P.C. clearly stipulates in the beginning statement itself that when a person has a reasonable apprehension to believe that they Anticipatory Bail Nos.2 and 3 of 2021 can be arrested on an accusation for commitment of a non-bailable offence, they can move the High Court or the Court of Sessions for grant of an anticipatory bail. The power to grant anticipatory bail must be exercised by the Court in very exceptional cases. The Court must be satisfied that there is a reasonable cause and a reasonable ground for grant of anticipatory bail. Section 438 Cr.P.C.

protects the right to life and personal liberty of such persons by providing them with a remedy against frivolous detention. In a country where rifts and rivalries are common, its citizens should have a remedy which prevents disgracing their right to life and personal liberty. [23] In Bhadresh Bipinbhai Sheth v. State of Gujarat and another, reported in (2016) 1 SCC 152, the Hon'ble Supreme Court has laid down certain guidelines in respect of application for anticipatory bail. In paragraph 25.10, the Hon'ble Supreme Court held as under:

"25.10. We all also reproduce para 112 of the judgment in Siddaram Satingappa case, wherein the Court delineated the following factors and parameters that need to be taken into consideration while dealing with anticipatory bail:

(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

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(b) 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;

(c) The possibility of the applicant to flee from justice;

(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) 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;

(h) 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 free, fair and full investigation, and there should be prevention of Anticipatory Bail Nos.2 and 3 of 2021 harassment, humiliation and unjustified detention of the accused;

(i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant.

(j) 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."

[24] As held by the Hon'ble Supreme Court in Bhadresh Bipinbhai Sheth (supra), frivolity in prosecution should always be considered 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 anticipatory bail. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. It should necessarily depend on facts and circumstances of each case in consonance with the legislative intention. [25] The law is well settled that anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the Court is convinced that exceptional circumstances exist to resort to that extraordinary remedy. Presumption of innocence is a human right. No doubt, placing of burden of Anticipatory Bail Nos.2 and 3 of 2021 proof on accused in certain circumstances may be permissible, but there cannot be presumption of guilt so as to deprive a person of his liberty without an opportunity before an independent forum or Court. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law.

[26] It is the duty of the Court to exercise its jurisdiction in proper way to protect the personal liberty of a citizen. If Courts do not interfere, we are troubling the path on destruction. This proposition of law has been laid down by the Hon'ble Supreme Court in its recent decision in the case of Arnab Manoranjan Goswami Vs. The State of Maharashtra and Others, decided on 11.11.2020.

[27] Though the offence alleged in the instant case is grave in nature, which includes the offence under Section 4 of the POCSO Act, the petitioners were not named in the FIR. It is an admitted case that the petitioners herein have helped the accused Prasanta Singh for elopement. Since the allegations levelled against the petitioners are limited in nature of helping the accused Prasanta Singh and prima facie the said act of the petitioners would not attract the commission of offence under the POCSO Act in respect of the petitioners, in the interest of justice, they are entitled to get the anticipatory bail.

Anticipatory Bail Nos.2 and 3 of 2021 [28] As admitted by the respondent State, the investigation is going on the right way. In such circumstances, if the anticipatory bail is granted to the petitioners, no prejudice would be caused either to the victim or the prosecution. It is not the case of the respondent State that the petitioners herein are trying to tamper the evidence. When that being the position, taking into account the limited allegations levelled against the petitioners, this Court is of the view that the petitioners are entitled to get anticipatory bail, provided they should co-operate with the investigating officer in completing the investigation. This Court is of the considered opinion that in order to ascertain the truth, a fair and unbiased investigation is necessary. In the light of the above, by imposing some stringent conditions, if the petitioners are ordered to be released on anticipatory bail, it would serve the purpose.

[29] Accordingly, these petitions are allowed and the petitioners are granted anticipatory bail in the event of their arrest in FIR Case No.76(10)2020 on the file of KCG Police Station for the offences punishable under Sections 376, 366-A,, 417 IPC and Section 4 of POCSO Act, subject to the following conditions:

- (i) The petitioners in Anticipatory Bail Nos.2 and 3 of 2021 shall executed a personal bond for Rs.50,000/- (Rupees Fifty Anticipatory Bail Nos.2 and 3 of 2021 Thousand) each with two sureties for the like sum each to the satisfaction of the Sessions Judge, Thoubal.
- (ii) The petitioners are directed to appear before the Respondent police daily at 10.00 a.m. until further order.
- (iii) They shall surrender before the Investigating Officer within fifteen days from today, failing which this order shall automatically stand cancelled.
- (iv) They shall co-operate with the investigation as and when required.
- (v) They shall not tamper with the prosecution evidence in any manner.
- (vi) They shall not leave the jurisdiction of the trial Court without prior permission.
- (vii) They shall not indulge in similar type of criminal activities in future.
- (viii) If they violates anyone of the conditions, the prosecution is at liberty to file petition for cancellation of the anticipatory bail.
- (ix) This Court has not delve into the merits of the matter and the views expressed in this order are prima facie only.

JUDGE FR/NFR

-Larson Anticipatory Bail Nos.2 and 3 of 2021