

Wahengbam Joykumar Singh vs The Officer-In-Charge on 18 March, 2024

Author: A. Guneshwar Sharma

Bench: A. Guneshwar Sharma

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IN THE HIGH COURT OF MANIPUR
AT IMPHAL

1. Bail Application No. 11 of 2023

Wahengbam Joykumar Singh, aged about 52 years, S/o (L)
Biram Singh of Wangkhei Hijam Leikai, P.O. & P.S. Po
Imphal East District, Manipur-795005.

..... P

- Versus -

The Officer-in-Charge, Thoubal Police Station, P.O. &
Thoubal District, Manipur-795138.

..... Respond

With

2. Bail Application No. 12 of 2023

Ayekpam Keshorjit Singh, aged about 46 years, S/o (L)
Kunjo Singh, a permanent resident of Haobam Marak Iro
P.O. & P.S. Thoubal, Thoubal District, Manipur-795138

..... P

- Versus -

The Officer-in-Charge, Thoubal Police Station, P.O. &
Thoubal District, Manipur-795138.

..... Respond

B E F O R E

HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioners/Accused :: Mr. S. Chittaranjan, M
A. Priyokumar Sharma,

For the respondents :: Mr. Y. Ashang, PP

Date of hearing :: 06.11.2023 & 07.11.2023
Date of Judgment and Order :: 18.03.2024

Bail Appl. No. 11 of 2023 & Bail Appl. No. 12 of 2023

ORDER (CAV)

[1] Heard Mr. S. Chittaranjan, learned counsel along with Mr. Ch. Victor and Mr. A. Priyokumar, learned counsel for the petitioners and Mr. Y. Ashang, learned PP for the State respondent.

In the chargesheet submitted by the prosecution, there are three accused persons, namely- (i) Ayekpam Keshorjit Singh, [A-1]; (ii) Naorem Ricky Pointing Singh, [A-2]; and (iii) Wahengbam Joykumar Singh, [A-3]. Accused No.2 has already been released on bail. Charges have been framed against Accused Nos. 1 & 3.

[2] These two bail applications, being BA No. 11 of 2023 and BA No. 12 of 2023, are filed by the petitioners herein [accused Nos. 3 & 1] under Section 439 of CrPC in connection with FIR No. 17(1)2023 TBL U/S 307/326/34 IPC and 25(1-B) Arms Act added 302 IPC. Since these bail applications pertain to the same FIR, they are considered together and being disposed of by this common order. Vide common order dated 21.04.2023 in Cril. Misc. (B) Case No. 108 of 2023 and 180 of 2023, the Ld. Sessions Judge, Thoubal rejected the bail applications, as there was prima facie case against the petitioners and considering the gravity of the offences. [3] As per the prosecution, the brief fact of the case is that on 24.01.2023 at 11:30 am, the Officer-in-Charge of Thoubal PS received an information that on the same day at about 11 am, one Laishram Rameshwor Singh aged about 58 years, S/o L. Nimai Singh of Thoubal Kshetri Leikai, Bail Appl. No. 11 of 2023 & Bail Appl. No. 12 of 2023 Page 2 Thoubal District was shot by fire arms by unknown person at Thoubal Kshetri Leikai Ningombam Leirak, Thoubal District. Laishram Rameshwor Singh received bullet injury on the right side of his chest and was evacuated to hospital for medical treatment. Based on the information, the Officer-In- Charge, Thoubal PS registered a suo moto case under FIR being FIR No. 17(1)2023 TBL-PS, U/S 307/326/34 IPC and 25 (1-B) Arms Act for investigation. Later on, the injured person succumbed to his injury at the Raj Medicity Hospital, Imphal. Subsequently, the offence under Section 302 IPC was also added in the FIR.

[4] On 24.01.2023, the accused No. 2 namely one Naorem Ricky Pointing Singh was arrested from Haobam Marak Irom Leikai, Imphal West and the accused No. 1, namely Ayekpam Keshorjit Singh was arrested from the Office of the CDO/IW Complex on being surrendered before the Officer-in-Charge, Imphal West District Police Commando. Both the accused persons namely Naorem Ricky Pointing Singh and Ayekpam Keshorjit Singh were produced before the Ld. Chief Judicial Magistrate, Thoubal on 25.01.2023 and the Ld. Chief Judicial Magistrate, Thoubal was pleased to remand them into police custody and further remanded to judicial custody. Accused No. 2, namely Naorem Ricky Pointing Singh, who accompanied accused No. 1 at the time of incident, was released on bail. On 28.01.2023 at about 8 pm, some police personnel came at the residence of accused No. 3, namely Wahengbam Joykumar Singh and he was arrested. Bail Appl. No. 11 of 2023 & Bail Appl. No. 12 of 2023 Page 3 [5] On 02.02.2023, accused No. 3 was again produced before the Ld. Chief

Judicial Magistrate, Thoubal and the Ld. Magistrate was pleased to remand accused No. 3 into judicial custody. On 05.04.2023, the petitioners filed bail applications being Cril.Misc.(B) Case Nos. 180 of 2023 & 108 of 2023 U/S 439 CrPC before the Ld. Sessions Judge, Thoubal for releasing them on bail. However, the Ld. Sessions Judge, Thoubal rejected the said bail applications vide its common order dated 21.04.2023 on the ground that they have committed alleged grave offences and charge sheet was filed against them.

[6] It is the specific case of the prosecution that accused No. 1 namely Ayekpam Keshorjit Singh started applying RTI applications to the various Government Departments and most of the RTI applications were drafted by accused No. 3 namely Wahengbam Joykumar Singh, who is also an RTI activist and both of them become close associates. Accused No. 1 and accused No. 3 have filed RTI applications to many State Government Departments in order to find fault/loopholes in their functioning and demanding/extorting money from different Departments. It is alleged that the accused No. 1 in collusion with the accused No. 3 had demanded a sum of Rs. 5,00,000/- (Rupees five lakh) from one Officer of Agriculture Department, Manipur but he did not give any amount. When they tried to extort money from the Agriculture Department, one person namely Laishram Rameshwor Singh (deceased) of Thoubal Kshetri Leikai gave obstruction on their activities and they planned to target the said deceased person. Bail Appl. No. 11 of 2023 & Bail Appl. No. 12 of 2023 Page 4 [7] It is further alleged that accused No. 3 insisted accused No. 1 to carry his license gun when he went to Thoubal Kshetri Leikai and when the accused No. 1 reached the residence of one Devendra Singh of Thoubal (a beneficiary of PMKSY scheme), the deceased namely Rameshwor Singh also came there. The deceased asked the accused No.1 to take off his mask and started to take photograph of accused No. 1 by his mobile phone. The accused No. 1 took out his .32 pistol and fired upon one round to the deceased. As a result, the deceased person succumbed to his injury. It is stated that there is involvement of the petitioners in the commission of the offences and subsequently chargesheet under Sections 302/120-B/176 IPC and 27(1) Arms Act was submitted.

[8] During the pendency of the bail application, learned counsel for the petitioners informed this Court that the application under Section 227 CrPC filed by the accused No. 3 for his discharge was rejected by the learned Sessions Judge, Thoubal vide order dated 24.10.2023 in Cril. Misc Case No. 182 of 2023 [Ref: Sessions Trial No. 5 of 2023]. It was held that prima facie materials for the involvement of the accused No. 3 was made out. Vide order dated 07.11.2023 in ST No. 5 of 2023, learned Sessions Judge, Thoubal framed charges under Sections 302/120-B IPC and 25(1-B) Arms Act against accused No. 1 (Ayekpam Kishorjit Singh) and under Sections 302/120-B IPC against accused No. 3 (Wahengbam Joykumar Singh). However, accused No. 2 (Naorem Ricky Pointing Singh) was discharged. This Court has taken judicial note of the subsequent development.

Bail Appl. No. 11 of 2023 & Bail Appl. No. 12 of 2023 Page 5 [9] The main ground for challenge against the impugned order is that the bail applications were rejected considering the nature and gravity of the offence alleged and submission of the charge sheet. It is also stated that there is no prima facie case against the accused No. 1 & 3. It is submitted that the accused are in custody for a long time and the purpose of custody is to secure physical presence of the accused. Since chargesheet has already been submitted, the accused persons who are bread earners of their families are in custody for long period and there is no likelihood of absconding, it is submitted that the

accused persons be released on bail. With respect to the allegation of instigation against the accused No. 3 of advising the accused No. 1 to teach a lesson to the deceased and to bring gun when visiting Thoubal, it is stated that there is no material to substantiate this charge. It is alleged that accused No. 2 told the police that accused No. 1 informed accused No. 3 after the incident about the killing of the deceased. It is clarified that accused No. 1 sought advice from accused No. 3 (who is a lawyer by profession) and as per his advice, accused No. 1 surrendered before the police. It is stated that the involvement of accused No. 3 cannot be established from the statements of co-accused Nos. 1 & 2 and no other witnesses ever supported this allegation. It is stated that accused No.1 took legal advice from accused No.3, who is also a practising lawyer. It is also stated that accused No.3 is a diabetic patient having T2DM for the last 10 years and he needs proper medical attention and medication and such facility is not available in jail.

Bail Appl. No. 11 of 2023 & Bail Appl. No. 12 of 2023 Page 6 [10] The State respondent has filed counter affidavit stating that from the photograph taken by the deceased, Laishram Rameshwor Singh just before Ayekpam Keshorjit Singh fired upon him, it clearly shows that there was no reason of taking out of any gun by the deceased. From the spot, the police recovered one empty case and there was only entry and exit bullet injury on the right hand and right righty side chest of the deceased and moreover, during PM examination, recovered one deformed projectile from the body of the deceased. It clearly shows that accused No. 1 fired upon the deceased intentionally to kill him while he was taking photo on his mobile phone. It is also stated that accused No.3 advised accused No.1 to carry latter's licence gun while visiting Thoubal and also to teach a lesson to the deceased. As per the statement of accused No.2, after the incident and when they (ie, accused Nos. 1 & 2) were returning, accused No.1 informed accused No.3 that he had killed the person and sought advice. As per the statements of both accused Nos. 1 & 3, they have working together for a long time and for the purpose of applying RTI applications and extorting money from the government officials. It is stated that accused persons admitted to have committed the crime and also the charges levelled against them. It is prayed that the bail applications be rejected. [11] Referring the written arguments, Mr. S. Chittaranjan, learned counsel for the accused persons submits that there are no materials to substantiate the charges alleged against the petitioners herein. With respect to accused No.3, Wahengbam Joykumar Singh, it is pointed out that the only allegation against him is frequent telephonic contact between accused Nos. Bail Appl. No. 11 of 2023 & Bail Appl. No. 12 of 2023 Page 7 1 & 3, after the incident and their close association as RTI activists and extorting money from the officials. It is also alleged against accused No.3 that he advised accused No.1 to carry his licence gun while visiting Thoubal and to teach the deceased a lesson. Mr S. Chittaranjan, learned counsel for the petitioners submits that these materials are not sufficient to cope the accused No.3 in the present case, as none of the witnesses have supported these statements. The allegations against accused No.3 are based on the statements of co-accused Nos. 1 & 2. Such statements of the co-accused are not admissible against accused No.3 in absence of any corroboration from independent witnesses. It is admitted by accused No.3 that after the incident accused No.1 informed him through mobile about the murder and sought his advice. It is submitted that the accused No.3 (a practicing advocate) advised accused No.1 to surrender and accordingly accused No.1 surrendered to the police. It is re-iterated that there is no material to link up accused No.3 in the crime and even accused No.2 who accompanied accused No.1 at the relevant time of alleged murder was also discharged by the learned Sessions Judge, Thoubal. It is also stated that accused No.3 has serious

medical problems which required continuous attention. It is prayed that accused No.3 may be released on bail on such term and conditions as deem fit by this Court.

[12] Regarding allegations against accused No.1, Mr S. Chittaranjan, learned counsel submits that there is no material to substantiate the allegations of conspiracy between accused Nos. 1 & 3 to kill the deceased and to extort/demand of money from government officials in Bail Appl. No. 11 of 2023 & Bail Appl. No. 12 of 2023 Page 8 connection with RTI applications. It is pointed out that these allegations have been extracted from the accused persons during interrogation in police custody and is hit by Section 26 of the Evidence Act. It is stated that the firing of a single shot from the gun of accused No.1 was on sudden provocation by the deceased and it cannot be a murder in any circumstances. It is also stated that accused No.1 did not know the deceased earlier and met him for the first time at that moment. If the deceased did not come to that place, he would not have died. This shows that there is no intention to kill the deceased. During the course of hearing, Mr. S. Chittaranjan, learned counsel has submitted that believing the prosecution story as true, at most charge under Section 304 IPC may be made out against accused No.1. It is highlighted that further custody of the accused is not required once charge is framed as there is no likelihood of absconding and influencing the prosecution witnesses. It is also pointed out that in the counter affidavit filed by the State, there is no averment that the accused persons will abscond or threaten the witnesses if released on bail. It is prayed that the accused No.1 be also released on bail. [13] Learned counsel for the petitioners/accused relies on the following case laws:

(a) Bail is rule and jail is exception. (1977) 4 SCC 308; (2012) 1 SCC 40; (2020) 13 SCC 791; (2021) 2 SCC 427.

(b) Gravity cannot be sole ground for rejecting bail application. (2012) 1 SCC 40; (2020) 13 SCC 337.

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(c) Factors to be considered while considering bail application, such as- prima facie ground; gravity of offence; likelihood of absconding; character and standing of the accused; likelihood of repeating the offence; danger of granting bail. (2010) 14 SCC 496.

(d) Chargesheet is mere an opinion of the IO on the materials collected by him and is not required corroboration and contradiction of other material witnesses. (2022) 12 SCC

200. It is submitted that on the principles laid down in the above judgments, the accused persons are entitled to be released on bail. [14] Per contra, Mr. Y. Ashang, learned PP submits that on the basis of the materials collected by the prosecution, there are ample materials for involvement of the accused persons in the present FIR case. The association of the accused Nos. 1 & 3 for a long time for applying RTI applications and then extorting/demanding money from the government officials are well established. The present case has also arisen out of demand of money from government officials by the accused persons. It is pointed out that accused No.1 admitted his presence at the place of occurrence and his holding of gun immediately before firing was evident from the photograph taken

by the deceased by his mobile phone. The accused No.1 admitted firing a shot to the deceased and the same bullet has been confirmed by FSL report and post mortem report confirmed death due to Bail Appl. No. 11 of 2023 & Bail Appl. No. 12 of 2023 Page 10 bullet injury. Learned PP submits that frequent calls between accused Nos. 1 & 3 after the incident as per CDR shows a prima facie link between them for the criminal conspiracy. Reliance is placed on the decision reported as (2010) 14 SCC 496 (also relied by the accused) regarding factors to be considered during hearing of bail application such as gravity of offence, likelihood of absconding, etc. Learned PP also refers to the decision reported as (2009) 2 SCC 281 to the point that discussion on merit of the case has to be avoided while deciding bail application. It is further submitted that the sufficiency of the materials and documents relied in the chargesheet are to be established during the trial. However, there are strong materials against the accused persons. Accused No.1 admitted his presence at the spot and firing of the fatal shot to the deceased. Whether the same is murder or out of sudden provocation is to be confirmed during the trial and the same should not to be decided while considering bail applications. It is prayed that the bail application be rejected.

[15] This Court has considered the submissions made at bar, the materials on record, the case law cited by parties and the subsequent development of framing of charges against the accused Nos.1 & 3. [16] It is the settled proposition of law that while considering the bail application, the court has to consider- (i) whether there is prima facie ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in event of conviction; (iv) danger of the accused absconding, if released on bail; (v) character, Bail Appl. No. 11 of 2023 & Bail Appl. No. 12 of 2023 Page 11 behaviour and standing of the accused in the society; (vi) likelihood of repeating the offence; (vii) apprehension of influencing the witnesses; (viii) non-consideration of merit of the case and evidences in details; (ix) bail is rule and jail is exception; (x) object of bail is to secure attendance of the accused during trial. All these aspects have to be considered in totality in facts and circumstances of the case.

[17] In the present case, it is the admitted fact that accused No.1 was present at the spot with a gun and he fired a single shot to the deceased. It is also an admitted fact that both accused Nos. 1 & 3 are RTI activists and have been in close associate for a long time. No doubt, the offence of murder is one of the gravest offences charged against the accused persons.

[18] It is seen that the accused Nos. 1 & 2 were present at the time of incident. Accused No.2 who was a driver was sitting in the vehicle. Accused No.1 fired a gun shot to the deceased and as a result the latter died. The allegation against accused No.3 is that he advised accused No.1 to take gun while going to Thoubal and to teach the deceased a lesson. It is on record that there were frequent telephonic calls between accused Nos. 1 & 3 after the incident and accused No.2 disclosed to the police that accused No.1 informed accused No.3 by telephone about the murder. However, none of the witnesses stated about the role of accused No.3 in the murder except for the statements of co-accused Nos. 1 & 2.

Bail Appl. No. 11 of 2023 & Bail Appl. No. 12 of 2023 Page 12 [19] From the record, it is evident that the accused No.1 was present at the spot and admitted the firing of a shot to the deceased. It is stated that the firing was due to sudden provocation from the deceased. It is the case of the accused

No.1 that even if believing the prosecution story in toto, at most the charge under Section 304 IPC of culpable homicide not amounting to murder may be made out. This Court is of the considered view that whether the offence is murder or not, is to be examined during the trial on appreciation of evidences and materials on record. The same cannot be decided in a bail application. The allegation against the accused No.3 is advising accused No.1 to carry gun while going to Thoubal and to teach a lesson to the deceased. Conspiracy theory is connected to the frequent telephonic calls between accused Nos.1 & 3 just after the incident. Accused No.3 has explained that the same was for taking legal advice and as per his advice the accused No.1 surrendered to the police. These are the main allegations against the accused No.3 based on the statements of accused No.1 & 2 given to the police and as per CDR. Whether the long association of accused Nos.1 & 3 for filing RTI applications will be sufficient to establish criminal conspiracy, is to be examined during trial. It is a fact that accused No.3 is also a practicing lawyer.

[20] Considering the materials on record and the settled proposition of law, bail application being BA No. 11 of 2023 is allowed and BA No. 12 of 2023 is rejected. Accordingly, it is directed that the accused No.3, Wahengbam Joykumar Singh be released on bail on bond of Rs.50,000/- Bail Appl. No. 11 of 2023 & Bail Appl. No. 12 of 2023 Page 13 with a surety (govt. employee) of like amount to the satisfaction of learned Sessions Judge, Thoubal with the following conditions that

- (i) the accused No.3 shall appear before the trial Court on all dates fixed except on such dates as exempted by the Court;
- (ii) the accused No.3 shall not leave the State of Manipur without the leave of the trial Court;
- (iii) the accused No.3 shall not influence with any of the witnesses;
- (iv) on violation of the any of the conditions, the respondent may approach this Court for cancellation of the bail granted.

[21] With the above observations and directions, the bail applications are disposed of. It is clarified that this Court does not express any opinion on the merit of the case and anything observed herein is confined for the purpose of disposal of the bail applications. [22] Send a copy of this order to learned Sessions Judge, Thoubal for information.

JUDGE FR/NFR joshua Bail Appl. No. 11 of 2023 & Bail Appl. No. 12 of 2023 Page 14