

Khundongbam Joychandra Meitei vs The Officer-In-Charge on 10 October, 2022

Author: M.V. Muralidaran

Bench: M.V. Muralidaran

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IN THE HIGH COURT OF MANIPUR
AT IMPHAL

AB No. 8 of 2022

Khundongbam Joychandra Meitei, aged about 26 years, S/o Kh. Ibothoi Singh, a resident of Thoubal Kiyam Siphai Khudongbam Leikai, P.O. & P.S. Thoubal, District Thoubal, Manipur.

....Petitioner/Accused Person

-Versus-

1. The Officer-in-Charge, Women Police Station, Bishnupur, P.O. & P.S.- Bishnupur, Bishnupur District, Manipur.
2. Julia Pukhrambam, aged about 26 years, D/o P. Shantikumar Singh, a resident of Naranseina Awang Leikai, P.O. & P.S. Moirang, Bishnupur District, Manipur-795133.

.... Respondents

BEFORE HON'BLE MR. JUSTICE M.V. MURALIDARAN For the Petitioners :: Mr. Th. Jugindro, Advocate. For the Respondent No.1 :: Mr. H. Samarjit, PP For the Respondent No.2 :: Mrs. Momota Devi Oinam, Advocate Date of Hearing and reserving Judgment & Order :: 16.08.2022 Date of Judgment & Order :: 10.10.2022 Page | 2 JUDGMENT AND ORDER (CAV) This petition has been filed by the petitioner under Section 438 Cr.P.C. seeking to grant anticipatory bail in the event of his arrest in connection with FIR No.26(12)2021 under Section 366/376/417 IPC on the file of the Women Police Station, Bishnupur.

2. The case of the prosecution is that the victim lodged a complaint before the Women Police Station, Bishnupur stating that she and the petitioner have been in relationship for around 10 years and eloped on 22.11.2018 and they had sexual intercourse on the pretext of fake promise by the petitioner to marry her and even after their elopement, the petitioner raped her saying that he and the victim are now couple who are legally married by Court marriage. Based on the complaint lodged by the victim, the Women Police Station, Bishnupur registered a case in FIR No.26(12)2021 under Section 366/376/417 IPC against the petitioner.

3. According to the petitioner, he might be arrested by Women Police Station, Bishnupur at any moment and his father was granted anticipatory bail by the learned Sessions Page |3 Judge, Bishnupur in the said case. According to the petitioner, he never committed any offence of kidnap, rape and cheating as alleged by the complainant/victim and in fact pursuant to the complaint, the petitioner and his father were called for the Bishnupur Women Police and they were attended and have given statements and fully co-operated with the investigating officer. Since the petitioner apprehend arrest from the hands of the respondent Police, he prayed for anticipatory bail.

4. Opposing the petition, the respondent police filed objection stating that based on the complaint lodged by the complainant, the investigating officer conducted investigation and the investigation reveals that the petitioner had kidnapped the victim girl without her consent and regardless of her unwillingness in the elopement, she was even made to sign an affidavit by befooling her for registered marriage and induced into sexual intercourse on the pretext of legally wedded wife and raped the victim while cheating her until he eloped with another girl. It is stated that in due course of investigation, the petitioner might have concealed with the facts and circumstances of the offence against the victim. Therefore, he is required to be arrested and keep into police custody for a thorough Page |4 examination so as to extract more relevant information. The grant of anticipatory bail in favour of the father of the petitioner is not a ground in seeking anticipatory bail in favour of the petitioner. Thus, prayed for dismissal of the petition.

5. Mr. Th. Jugindro, the learned counsel for the petitioner submitted that the petitioner is in love affairs with the victim from the year 2014 till 2018 without any objection and obstacle from any corner and that they had spent a lot of time and have shared all the life ups and down and, as such, they decided to elope and settle the rest of the life as legally husband and wife at their accord. He would submit that on 22.11.2018 both the petitioner and the victim decided to elope and no other persons helped them in their plan for eloping. On the day of their eloping, the petitioner was staying in a rented house at Keishamthong Top Leirak and they were scared of telling their elopement news to their parents, but they spend the life time memories together happily. He would submit that surprisingly, on the same day of elopement, the parents of the victim came to the house of the petitioner at Thoubal to enquire about their daughter's whereabouts at about 10 p.m. and at that time, the parents of the petitioners were sleeping but woke up when they Page |5 heard the hue and cry sounds of girl parents. At that time, the parents of the petitioner was also astonished to hear the news and politely asked the parents of the victim to settle the issue amicably and after some conversation, the parents of the victim left the house of the petitioner without uttering any arguments.

6. The learned counsel further submitted that later on the parents of the victim came back along with some police personnel from Thoubal and threatened the parents of the petitioner to handover the victim and that the parents of the petitioner stated to the police and even the parents of the victim that they are also surprised to hear the elopement news and did not know the whereabouts of the petitioner and the victim. He submits that after knowing their whereabouts, on the next day of elopement, the parents of the petitioner and the victim had talks and arrived at a conclusion to perform marriage as soon as possible and after that the parents have performed all the required formalities of Manipuri Hindu Customary law and had handed over the victim to their parents without having any issues.

7. The learned counsel next submitted that soon the petitioner and the victim entered the house of the petitioner, the Page |6 parents of the petitioners asked the victim and the petitioner whether the victim has willingly eloped or not and the victim replied that she willingly come along with the petitioner and there is no force or coercion from any angle. Even the victim stated to the parents of the petitioner that to go for a ritual process of Hidok Chatpa in a grand manner and promised the petitioner and the parents of the petitioner that her parents will not do anything. Accordingly, the parents of the petitioner performed all formalities in a grand manner and accepted the girl as their own daughter.

8. The learned counsel further submitted that the parents of the petitioner were little bit worried about the reaction of the victim mother and asked the victim to give some statement in a written form that she eloped with the petitioner at her own will and, as such, an affidavit dated 23.11.2018 was executed by affixing photos. After the elopement, the victim has started avoiding the petitioner with no reason and the petitioner asked the victim to settle the life by performing marriage ceremony as soon as possible and the victim evaded and keeps on saying that she will get married only after she got a Government job. He would submit that unsatisfied with the Page |7 reply given by the victim and since the approach made by the petitioner were turned down, the petitioner has taken a step to finalise the meaning of their relationship and asked the victim to give some answer in the matter of their marriage. In fact, the victim stated that if the petitioner is in hurry to get married the petitioner can marry any other girl and asked the petitioner to stop disturbing in her life. The learned counsel submitted that at that time, the petitioner asked the victim to give her statement in the form of writing and the victim stated that it is not required and her word is enough and, in fact, the victim also sent text message to the mobile of the petitioner.

9. The learned counsel then submitted that after breaking up of the relationship, the petitioner and victim were not in touch with each other for more than one and half year and being human being, the petitioner started having an affairs with another girl and started exchanging each other life ups and down. While so, the petitioner received a call from the Women Police Station on 26.12.2021 requiring him to attend the Police Station on 27.12.2021 in connection with the complaint lodged by the victim and the petitioner was scarred enough that he will be arrested with no good reason. As such, he did not attend Page |8 the Police Station and thereby knocked the door of the Sessions Court for anticipatory bail. But unfortunately, his petition was dismissed by the Sessions Court. After the rejection of the petition by the Sessions Court, the petitioner apprehends arrest from the hands of the Women Police Station, Bishnupur and that if the petitioner is arrested in connection

with the FIR case, he shall be definitely spoiled his life career and his dedicated service to the society are meaningless and, that apart, the petitioner will put to irreparable loss and injury. Thus, a prayer is made to grant anticipatory bail to the petitioner.

10. Per contra, Mr. H. Samarjit, the learned Additional Public Prosecutor submitted that the victim is a differently abled and during the course of investigation, she had given her written statement, wherein she stated that she and the petitioner had known each other for 10 years and they eloped on 22.11.2018 and the elopement was done by force. He would submit that after finding them, they were brought to a lawyer's private office to do Court marriage and at first, she thought of refusing it, but on consistent persuasion by the parents of the petitioner saying if she and the petitioner do this Court marriage, they will become Page | 9 legal husband and wife since they will be marrying legally by the so called Court marriage.

11. The learned Additional Public Prosecutor further submitted that the victim gave consent when the lawyer asked her to sign on it and that they all know that anyone who violated the Court marriage will face severe punishment under the law and hence, the victim trusted it. She believed that they were now legally married by the Court marriage, as she has faith in the power of judiciary. He further submits that the petitioner and his parents all know that they have done the Court marriage. The parents of the victim asked the parents of the petitioner to handover a copy of the Court marriage and the same was not provided.

12. The learned Additional Public Prosecutor next submitted that all these years, the victim has been living and studying hard believing that the petitioner and the victim are peacefully a legal couple, but what happened was the exact opposite. When the victim asked about the Court marriage details, the parents of the petitioner told that the lawyer who had them sign the Court marriage registration said that there was no such Court marriage between the two of them and the Page | 10 said fact was known to the victim and her parents some days back at the police station and that her Court marriage turns out to be invalid.

13. The learned Additional Public Prosecutor submitted that the collected medical report of the victim proves that there are sign of defloration present and the medical report regarding the petitioner reveal that no definite opinion can be given as to whether the petitioner has performed recent sexual intercourse in the ordinary way and there is nothing to suspect about his potency.

14. The learned Additional Public Prosecutor then submitted that while dismissing the anticipatory bail petition, the learned Sessions Judge discussed in detail and after the dismissal of the petition, on 29.1.2022 when the respondent Police caused arrest of the petitioner, he found absconding from police arrest. According to the learned Additional Public Prosecutor, the arrest of the petitioner is very much required and therefore, there is no merit in the present petition. Thus, a prayer is made to dismiss the petition.

15. This Court considered the rival submissions and also perused the materials available on record.

16. The grievance of the petitioner is that after breaking up of the relationship, the petitioner and the victim were not in touch with each other for more than one and half years, which ultimately means that a relationship was completely dead. Further, the victim never tried even once during this long gap to communicate with the petitioner and both of them do not know what is going on to each other life, as both of them have started leading their own way of life and being a human the petitioner has started to have an affair with another girl.

17. As could be seen from the records, the investigating officer recorded Section 164 Cr.P.C statement of the victim, wherein she has stated that she had known the petitioner for the last 10 years and she met the petitioner during her college days at DM College of Arts and she got into a relationship with the petitioner during that time. On 22.11.2018, she and the petitioner went to Sangal festival at Kelbul-Lamjao and they returned back around 4.30 P.M. from Kelbul-Lamjao and on their way back, the petitioner did not stop his car in front of her house although she requested him to stop the car. She constantly begged him to stop the car, but the petitioner did not P a g e | 12 stop. He made her elope with him by force and the petitioner took the victim to the house of Dinesh's sister and tried to have sex with the victim, but she refused. Later, the petitioner informed the victim that her parents had come looking for her at the petitioner's house at Thoubal. At around 11.30 P.M., the petitioner's parents and his relatives came and took them to a lawyer's house to do Court marriage. When they reached the lawyer's house, the petitioner's parents and his relatives advised her to agree to their elopement as they are going to do Court marriage. She also believed them as they said they are going to do their Court marriage and gave her consent. The lawyer then gave her a document to sign and she put her signature on the document. After that the lawyer and his wife took a photograph of her and the petitioner. As she put her signature on the document, she thought that they had Court marriage. The petitioner and his parents also told her that Court marriage has been done. After that, they all went to the house of the petitioner's grandmother. On the next day i.e. on 23.11.2018 morning, they had food at the house of the petitioner's grandmother and then she was taken to petitioner's house. In the evening, she was sent back home as per customary practice. The petitioner's father had told her parents P a g e | 13 that they will finish building their house and they will perform a grand wedding for them.

18. In her statement, the victim further stated that in the month of August, 2019, she got admission in Manipur University for Ph.D. from September 2019 and she started staying in the hostel at Manipur University. The petitioner used to come and meet her at Manipur University campus. Around last week of September 2019, the petitioner and the victim went for shopping and the petitioner told her that he has to visit his cousin brother Sadananda at his rented house at Keishampat. When Sadananda had gone out to buy eatables, the petitioner tried to have sex with her, but she refused. He insisted her to have sex with him by saying that they had already eloped, they had done Court marriage and that they are husband and wife and believing his words, they had sex. She was also afraid that he would not leave her if she don't have sex with him. After that, the petitioner and the victim had sex quite a few times till the month of January, 2021 and she kept in touch with the petitioner till August, 2021 through message and after that she could not get in touch with him anymore as he blocked her number.

19. The victim further stated in her Section 164 Cr.P.C. statement that in the month of November, 2021, she came to know through one of her friends that the petitioner had eloped with another girl. She did not believe the same at first, but later petitioner's uncle also informed her mother that the petitioner had eloped with another girl. After that she had filed a complaint to the police and she came to know that the document which she signed was not a Court marriage document, but it was a fake one. She feels that she has been used by the petitioner and the petitioner left her without saying anything and also the petitioner took advantage of her disability.

20. Mr. Jugindro, the learned counsel for the petitioner, by placing reliance upon the decision of the Hon'ble Apex Court in the case of Dr.Dhruvaram Murlidhar Sonar v. The State of Maharashtra and other, (2019) 1 Scale 64 : (2019) AIR (SC) 327, submitted that the consensual physical relationship between parties would not constitute the offence under Section 376 IPC. The learned counsel also by placing reliance upon the decision of the Hon'ble Apex Court in the case of Sonu @ Subhash Kumar, (2021) 3 Scale 635 : (2021) AIR (SC) 1405 further submitted that a breach of a promise cannot P a g e | 15 be said to be a false promise and to establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of given it.

21. In Dr. Dhruvaram Murlidhar Sonar, supra, the Hon'ble Apex Court held:

"20. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have P a g e | 16 foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 of the IPC."

22. In Sonu @ Subhash Kumar, supra, the Hon'ble Apex Court held:

"9. In PramodSuryabhanPawar (supra), while dealing with a similar situation, the principles of law which must govern a situation like the present were enunciated in the following observations:

"Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince

her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To P a g e | 17 establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. ..."

10. Further, the Court has observed:

"To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act."

23. The prima facie statement of the victim shows that the petitioner by making a false promise had sexual intercourse with the victim several times and he had also breached the promise. Further, the petitioner compelled the victim for P a g e | 18 elopement and after elopement, he forced the victim to have physical relation with her several times till August, 2021. Moreover, the statement of the petitioner is also to the effect that now he is in love affairs with some other girl. In the aforesaid factual background of the case, this Court is of the view that the decisions relied upon by the learned counsel for the petitioner are not applicable to his case.

24. As could be seen from the records and as stated supra, the petitioner and the victim having love affairs for more than ten years and on 22.11.2018, the petitioner compelled the victim for elopement and after that a Court marriage drama was made by the petitioner with the collusion of his counsel and his parents. The records further reveal that after taking the petitioner and the victim, the parents of the petitioner sent the victim back to her parents by saying that after finishing the construction of the building, they will perform a grand marriage for them. Thereafter, the petitioner and his parents avoided the victim. In her statement, the victim also stated that there is no registration of marriage between the petitioner and the victim and the alleged Court marriage and its registration are fake.

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25. From the materials produced by the prosecution, it has been prima facie established that the petitioner had kidnapped the victim without her consent and regardless of her unwillingness in the elopement, she was even made to sign in the affidavit by befooling her for registered marriage and induced into sexual intercourse on the pretext of legally wedded wife and raped her by cheating till the petitioner eloped with another girl.

26. During the course of arguments, the learned Additional Public Prosecutor submitted that in due course of investigation, the petitioner might have concealed with the facts and circumstances of the

offence against the victim and therefore, he is highly required to be arrested and keep him into police custody for a thorough examination so as to extract more relevant information. It is also the submission of the learned Additional Public Prosecutor that the petitioner may continue to commit such offensive acts to other innocent girls causing threat to the society as a whole and such offences are crimes against women. This Court, prima facie, found some force in the submissions made by the learned Additional Public Prosecutor, as the petitioner himself admitted that he is now having love P a g e | 20 affairs with another girl after breaking the relationship with the victim.

27. Earlier, the petitioner and his father approached the Sessions Court, Bishnupur for anticipatory bail. By an elaborate order dated 24.1.2022 in Cril. Misc. (AB) Case No.54 of 2021, the learned Sessions Judge, rejected the petition in respect of the petitioner and granted anticipatory bail to the father of the petitioner. On a reading of the order dated 24.1.2022, the learned Sessions Judge recorded that the custodial interrogation of the petitioner is highly required in order to ascertain all the facts in connection with the present case. In his order, the learned Sessions Judge held as under:

"On perusal of the police report, it shows prima facie that the petitioner No.2 had sexual relationship with the victim many a times by giving false promises. It is also in the police reports that the victim did not consent the petitioner No.2 at first when they eloped in the year 2018. It is also in the report that there appears an affidavit which the victim thought that it was a marriage registered in between the petitioner No.2 and herself but it turns into a piece of affidavit. This fact comes only when the victim was P a g e | 21 present before the Women Police Station, Bishnupur recently.

I do agree with the ld. counsel for the petitioner that the Hon'ble High Court of Manipur was pleased to grant pre-arrest bail to the petitioners involved therein mentioned supra. But I am not convinced that the petitioner No.2 has not committed rape to the victim within the circumstances/descriptions of Section 375(d) fourth mentioned supra. Hence, the cited case is supported the case of the prosecution. In my view, in such circumstances, custodial interrogation of the petitioner No.2 is highly required in order to ascertain all the facts in connection with the present case.

As regards petitioner No.1, there is no say as against him on the part of the prosecution. At the time of hearing, the ld. Additional PP also submitted that he has no objection in granting pre-arrest bail to the petitioner No.1 since there is no allegation as against him.

Considering the above facts, the petition filed by the petitioner No.1 is allowed subject to the condition that the petitioner No.1 shall execute a PR bond of Rs.30,000/- as and P a g e | 22 when he is arrested in connection with the present case and that he should co-operate the investigating officer in all respects and also should present as and when the police require his attendance before the I.O.

At the same time, the petition filed by the petitioner No.2 is hereby rejected. The earlier interim pre-arrest bail order dated 31.12.2021 stands vacated."

28. This Court finds no error in arriving at such conclusion by the learned Sessions Judge in respect of the pre- arrest bail petition of the petitioner. In fact, the learned Sessions Judge, while rejecting the anticipatory bail application in respect of the petitioner has considered the case and has rightly rejected the same and this Court finds no error in it.

29. At this juncture, by placing reliance upon the decision of the Hon'ble Apex Court in the case of Bhadresh Bipinbhai Sheth v. State of Gujarat and others, (2016) 1 SCC 152, the learned counsel for the petitioner submitted that a person seeking anticipatory bail is still a free man entitled to presumption of innocence. In the case on hand, the petitioner P a g e | 23 is an innocent person and therefore, he can be granted anticipatory bail.

30. In the earlier paragraphs this Court held that prima facie the offence is made out against the petitioner qua kidnap, rape and cheating. Further, the prosecution has prima facie established the involvement of the petitioner into the crime. Therefore, the decision in Bhadresh Bipinbhai Sheth (supra) relied upon by the learned counsel for the petitioner is not applicable to the present case in the facts and circumstances.

31. In so far as the grant or refuse of the anticipatory bail, the Hon'ble Apex Court in the case of Siddharam Satlingappa Mhetre vs State of Maharashtra and others, (2011) 1 SCC 694 has laid down the parameters as under:

"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;

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(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 the 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 accused is implicated with the help of sections P a g e | 25 34 and 149 of the Indian Penal Code, 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 P a g e | 26 accused is entitled to an order of bail."

32. Further, in *Jai Prakash Singh vs. State of Bihar*, (2012) 4 SCC 379, the Apex Court further elucidated the principles for consideration of anticipatory bail, which are as under:

"19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty.

(See *D.K. Ganesh Babu v. P.T. Manokaran & Ors.*, (2007) 4 SCC 434, *State of Maharashtra v. Mohd. Sajid Husain Mohd. S.Husain*, (2008) 1 SCC 213, and *Union of India v. Padam Narain Aggarwal*, (2008) 13 SCC 305)."

33. Having considered the given facts and circumstances of the case and keeping in mind the parameters laid down by the Hon'ble Apex Court in the decisions cited P a g e | 27 above and also the gravity of the offence, this Court is of the view that the petitioner cannot be granted anticipatory bail in this case.

34. In the result, the anticipatory bail application is dismissed. The interim order already granted by this Court is vacated.

35. It is made clear that the observations made in this order are limited to the question of considering the anticipatory bail to the petitioner and this Court has not delved into the merits of the offences levelled against the petitioner.

JUDGE FR/NFR Sushil