

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

AB No. 29 of 2022

Smt. Mayanglambam Prabha Devi, aged about 51 years,
W/o Shri M. Tomei Singh, a resident of Kakching Turel
Wangma, P.O. & P.S. & District Kakching, Manipur-
795103

.....Applicant/Accused Person

-Versus-

1. The State of Manipur represented by the
Commissioner (Home), Govt. of Manipur, Old
Secretariat, 795001.
2. The Officer-in-Charge, Kakching Police Station,
Kakching, Manipur-795103
3. Mayanglambam Robin Singh, 42 years, S/o(late)
Mayanglambam Radhamohon Singh, a resident of
Kakching Khunyai Leikai, P.O. & P.S. & District
Kakching, Manipur -795103.

.....Respondents

HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Petitioner	::	Mr. Sh. Athoi, Advocate
For the Respondents	::	Mr. Serto T. Kom, Advocate Mr. Y. Ashang, Addl. PP
Date of Hearing and reserving Judgment & Order	::	27.09.2022

Date of Judgment & Order :: **02.11.2022**

JUDGMENT AND ORDER

(CAV)

This petition has been filed by the petitioner under Section 438 Cr.P.C. seeking to enlarge her on bail in the event of arrest by the personnel of Kakching Police Station in connection with FIR No.101(11)2021 under Sections 413/420/471 IPC.

2. The case of the prosecution is that a complaint was filed by the younger brother of the petitioner before the learned Chief Judicial Magistrate, Thoubal under Section 190 read with Section 156(3) of Cr.P.C. for investigation by stating that the name of the petitioner was recorded in the patta of the agricultural land having patta No.994(N), C.S. Dag No.242 measuring an area of 1.40 acre at Village No.59, KakchingKhullen, Kakching Tehsil, Kakching District by using the forged signature of the complainant. Pursuant to the direction of the learned Chief Judicial Magistrate, an FIR No.101(11)2021 was registered under Section 413/420/471 IPC by Kakching Police Station against the petitioner and the case was taken up for investigation.

3. The case of the petitioner is that the complainant has made allegations against the petitioner, according to his choice and pursuant to the direction of the learned Chief Judicial Magistrate, Thoubal, the respondent police registered the instant FIR. Apprehending arrest in the hands of the personnel of Kakching Police Station, the petitioner earlier approached the learned Sessions Judge, Thoubal for anticipatory bail. Though the learned Sessions Judge granted interim pre-arrest bail to the petitioner initially, subsequently, the petition was dismissed on 21.6.2022. After the dismissal of the anticipatory bail petition, the petitioner apprehending arrest filed the present petition.

4. Opposing the petition, the respondents filed affidavit-in-opposition stating that during the course of investigation, the investigating officer examined the complainant and recorded his statement under Section 161 Cr.P.C. and had also sent requisition for furnishing related documents from the competent authority of the Assistant Survey Officer, Kakching Circle regarding mutation of case nos. which has entered the petitioner's name in the place of the complainant so as to ascertain the real fact of the case and the

competent authority has not furnished the documents till date. It is stated that the petitioner is not co-operating with the investigation and not revealing the truth and has not produced any supporting documents like registration and mutation of the land in question. Hence, he prayed for dismissal of the petition.

5. Mr. Sh. Athoi, learned counsel for the petitioner submitted that based on the false allegation, an FIR has been registered by the Kakching Police Station against the petitioner. In fact, the petitioner is a pattadar of the agricultural land bearing C.S. Dag No.242 measuring an extent of 1.04 acre and the complainant has no right over the said property. The petitioner alone was in possession and enjoyment of the said land by growing paddy and other seasonal crops from time to time.

6. The learned counsel would submit that since the issue involved between the petitioner and the complainant pertains to ownership of the piece of agricultural land, if the complainant is aggrieved by the order passed by the authority concerned of the Directorate of Settlement and Land Record, he has the remedy of filing revenue appeal before the competent appellate authority as per the provisions of the

Manipur Land Revenue and Land Records Act, 1960. Thus, the complainant has the remedy under the provisions of the said Act for ventilating his grievances. In such circumstances, the criminal court has no role to play.

7. The learned counsel urged that certain procedures have to be followed while recording the name of a person in respect of land property as provided under the relevant provisions of law. In the State of Manipur in respect of surveyed land the same is governed by the Manipur Land Revenue and Land Reform Act, 1960 as well as the provisions of the Indian Registration Act and the Transfer of Property Act.

8. The learned counsel further submitted that the learned Chief Judicial Magistrate, Thoubal could have straightaway rejected the complaint by asking the complainant for approaching the appropriate forum. Thus, the learned Chief Judicial Magistrate is the creator of the present issue for passing the order dated 21.6.2022 in CrI. Misc. (AB) Case o.107 of 2021 in connection with FIR No.101(11)2021 KCG PS under Section 413/420/471 IPC. If this Court does not come to protect the petitioner, who is an innocent lady and also an employee (adhoc) of the Department of Education(S), Government of

Manipur, her regularization will grossly be affected. Further, if the police personnel arrested the petitioner in connection with the FIR, she will suffer an irreparable loss and injury, which cannot be compensated in other terms and lot of problems will be created in her service career without any misconduct on her part.

9. Arguing so, the learned counsel submitted that the issue in question is civil/revenue matter and the criminal court, including Kakching Police Station, has no role to play. Moreover, there is no sustainable evidence to establish prima facie case for the offence under Section 420 IPC. Thus, a prayer is made to grant anticipatory bail.

10. Per contra, Mr. Y. Ashang, learned Additional Public Prosecutor submitted that the findings of the investigating authority is that the petitioner is not co-operating the investigation and she also failed to disclose the truth, thereby concealing the real facts and could not produce any supporting documents like registration and mutation of the land in question. Further, the petitioner is reluctant to disclose the particulars of the other persons who helped in committing the

offence/charge levelled against her which is highly required in the present case.

11. The learned Additional Public Prosecutor further submitted that despite appearing before the investigating officer, the petitioner did not tell truth, however, concealed all the facts to cover up the crime committed by the petitioner. The smooth and fair investigation could not be done without custodial interrogation. Hence, her custodial interrogation is highly required.

12. The learned Additional Public Prosecutor next submitted that the learned Sessions Judge has rightly rejected the anticipatory bail considering the nature and gravity of offences alleged against the petitioner. Thus, a prayer is made to dismiss the petition.

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

14. Before going to consider the merits of the petition for anticipatory bail, it is to be noted that the petitioner arrayed the State of Manipur, represented by the Commissioner (Home), Government of Manipur and the Officer-in-Charge,

Kakching Police Station, Kakching District Manipur as respondents 1 and 2 and **later on the complainant was added as respondent No.3.**

15. The present FIR has been registered by the Kakching Police Station pursuant to the direction of the learned Chief Judicial Magistrate, Thoubal. In a petition for grant of anticipatory bail, the State and the Superintendent of Police concerned are not required to be arrayed as parties. In fact, the State, represented by the concerned Department of the Government of Manipur and the concerned Superintendent of Police are unnecessary parties to the petition for anticipatory bail. On the other hand, for proper adjudication of the petition for anticipatory bail, if the complainant is impleaded as party respondent, particularly when the offences alleged against the accused involved under Sections 413/420/471 IPC, it would be useful for the Court to go through the contents of the complaint and accordingly to deal with the petition for anticipatory bail.

16. In the instant case, the petitioner has failed to enclose a copy of the complaint along with the petition. She only enclosed a copy of first page of the FIR. The petitioner is bound to enclose the copy of the complaint filed before the

learned Chief Judicial Magistrate, as she is aware of the complaint.

17. The grounds for seeking anticipatory bail should be examined by the High Court or Court of Sessions, which deal with the petition for anticipatory bail on going through the allegations levelled in the complaint against the accused. Filing of FIR though is not a condition precedent for exercising power under Section 438 Cr.P.C., to know the contents in the FIR and the complaint, both the complaint and the FIR are required to be annexed to the petition for anticipatory bail for proper adjudication of the petition. Mere averments set out in the petition are not enough for considering the petition for anticipatory bail. A readable copy of the complaint and the FIR ought to have been annexed to the petition for anticipatory bail so as to enable the Court to deal with the petition based on the allegations set out in the complaint and the FIR.

18. The Court must be satisfied that the accused invoking the provision of Section 438 Cr.P.C. has reason to believe that he/she is likely to be arrested for a non-bailable offence and that belief must be founded on reasonable grounds.

19. Mere “fear” is not belief, for which reason, it is not enough for the accused to show that he/she has some sort of vague apprehension that someone is going to make an accusation against him/her, in pursuance of which he/she may be arrested. The grounds on which the belief of the accused is based that he/she may be arrested for a non-bailable offence, must be capable of being examined by the Court objectively. Specific events and facts must be disclosed by the petitioner in order to enable the Court to judge the reasonableness of her belief, the existence of which is the sine qua non of the exercise of power conferred by Section 438 Cr.P.C.

20. It is pertinent to note that in the instant case, the petitioner has not even mentioned the FIR number in the prayer portion, for which she is seeking anticipatory bail.

21. Coming to the merits of the petition for anticipatory bail filed by the petitioner, the petitioner claimed that she is the pattadar of the land measuring an extent of 1.40 acres covered by C.S. Dag No.282 situated at Revenue Village No.59-Kakching Khullen, Kakching District, Manipur. On the other hand, it is the say of the respondents is that during the life time of the father of the complainant, he bought the said agricultural

land from one Naorem Nopur Singh with the help of his father. Thereafter, the name of the complainant was mutated in the records of right vide Mut. Case No.543/ASSO/K dated 26.11.2009 and the petitioner who is the elder sister of the complainant was also aware of the said mutation of the complainant in the records of right of the agricultural land.

22. According to the respondents, the complainant was working as Manager in Canara Bank and most of the time, he was moving from place to place because of his posting. It is stated that he was posted outside the State like Assam and Mizoram etc.

23. The learned Additional Public Prosecutor urged that when the complainant was posted at Porompat Branch, he had checked the land records of the said agricultural land and he came to know that behind his back, the petitioner has entered her name in the rights and title of the agricultural land after cancelling the name of the complainant from the land records.

24. Thus, the allegation against the petitioner is that she committed forgery of a document which is to be used in

transferring an immovable property, though her case is of a complete denial. Though the petitioner claimed that she is the lawful owner of the land measuring an extent of 1.40 acres covered by C.S. Dag No.242, the petitioner has not produced any relevant documents to support her claim either before the investigating officer or before this Court.

25. Earlier, when the petitioner filed Cril. Misc. (AB) Case No.107 of 2021 before the learned Sessions Judge, Thoubal for anticipatory bail, the learned Sessions Judge, by the order dated 23.11.2021, granted interim pre-arrest bail to the petitioner with certain conditions, in which one of the condition is that the petitioner shall co-operate with the investigation. According to the respondents, the petitioner is not co-operating in the investigation. Finally, when the petition was taken up for hearing on 21.6.2022, the learned Sessions Judge rejected the petition by observing as under:

“Accordingly, the IO of the case submitted its objection report stating inter alia that even though the petitioner claimed that she is the lawful owner of the said land. She could not produce any relevant documents to support her claim and that she is not co-

operating in the investigation and that the smooth and fair investigation could not be done without custodial interrogation. The IO has thus, prayed for rejecting the application of the petitioner.

I have also heard the Id. Addl. PP as well as the Id. Counsel for the petitioner and have perused and considered the materials on record in the light of the submissions made.

The allegations against the petitioner is that she committed forgery of a document which is to be used in transferring an immovable property, though her case is of complete denial. Therefore, so as to ascertain whether the offences have been committed by her or not, custodial interrogation of the petitioner is necessary. Considering the nature and gravity of the offences alleged, I am of the view that the interim orders dated 23.11.2021 needs to be set aside.

Hence, interim orders dated 23/11/2021 is set aside.

Anticipatory bail to the petitioner Prava is denied.”

26. The complainant has filed his objection to the petition stating that the name of the petitioner has been entered in the land record of the said land by forging documents and signatures which is under investigation. In the bail objection report filed by the Officer-in-Charge of Kakching Police Station before the learned Sessions Judge, it has been stated that he has also sent a requisition for furnishing the related document from the competent authority, namely the Assistant Survey officer, Kakching Circle regarding Mutation Case nos., which has entered the petitioner's name from the complainant, so as to ascertain real facts of the case. It is stated that so far, the competent authority has not furnished the related documents of the case. Since serious allegation of forgery has been levelled against the petitioner, the learned Sessions Judge has rightly rejected the petition for anticipatory bail. This Court finds no infirmity in the order of the learned Sessions Judge.

27. On overall analysis of the materials produced by both sides, this Court is of the view that in order to ascertain whether the offences have been really committed by the petitioner or not and to find out the true facts, the custodial interrogation of the petitioner is very much required.

Considering the nature and gravity of the offence levelled against the petitioner, this Court is of the opinion that granting anticipatory bail to the petitioner, who is not co-operating with the investigation, is inappropriate.

28. In so far as the grant or refusal of the anticipatory bail, the Hon'ble Apex Court in the case of **Siddharam Satlingappa Mhetrev. 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;*
- (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 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 accused is entitled to an order of bail.”

29. In ***Jai Prakash Singh v. State of Bihar, (2012) 4 SCC 379***, the Hon'ble Apex Court elucidated the principles for consideration of grant 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 enroped 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*.)”*

30. An anticipatory bail can be granted only in exceptional circumstances where the Court is prima facie of the view that the applicant has falsely been implicated in the crime and would not misuse his liberty. Here, it is a case where prima facie case of the involvement of the petitioner in the crime has been established by the prosecution and no contra proof has been produced by the petitioner. Evaluating the entire materials produced by the parties, this Court is of the view that this is not a case falling under the exceptional circumstances. Therefore, the petitioner is not entitled to seek the relief prayed for by her and, accordingly, the anticipatory bail application of the petitioner is liable to be dismissed.

31. 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 judgments cited 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.

32. In the result, the anticipatory bail application is dismissed. The following directions are issued to the Registry for strict compliance:

- (a) The Registry should ensure that petition for anticipatory bail or regular bail should be appended with legible copies of complaint and the FIR registered against petitioner/accused. If the petitioner/accused fails to enclose copies of the complaint and the FIR, the Registry should return the petition and only after due compliance, the petition should be numbered.
- (b) In all anticipatory bail, the complainant should be made as party respondent for proper adjudication of the petition.
- (c) The array of unnecessary respondents like the State, represented by Commissioner/Secretary (Home), Secretary to the Government Departments, Superintendents of Police and Deputy Superintendents of Police are to be avoided in the Anticipatory bail application and the Registry should not entertain the said applications.

- (d) The Registry should ensure array of the Officer-in-Charge of the concerned Police Station/Investigating Authority and the complainant as parties to the petition for anticipatory bail and bail.
- (e) The Registry is directed to strictly comply the above directions without any excuse.

JUDGE

FR/NFR

Sushil