

**HIGH COURT OF TRIPURA
AGARTALA**

A.B. No. 75 of 2021

Sri Gagan Debbarma

.....Petitioner(s)

Versus

The State of Tripura

.....Respondent(s)

For Petitioner(s) : Mr. Kohinoor N. Bhattacharya, Adv.

For Respondent(s) : Mr. R. Datta, P.P.

HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

Order

08/10/2021

Apprehending arrest in Mungiakami PS case No. 20 of 2021 registered for offence punishable under sections 341 and 302 read with section 34 IPC, accused applicant Gagan Debbarma has filed this petition under section 438 Cr.P.C for granting pre arrest bail to him.

[2] Factual context of the case is as under:

The officer in charge of Mungiakami police station, Khowai lodged a suo motu complaint at his police station on 20.06.2021 alleging, inter alia, that at 06.25 am on the day he received a telephonic information from police inspector Subhrangshu Bhattacharya of Kalyanpur police station who informed the complainant that one person suspected to be a cattle lifter was detained by the local people at Sovaram Chow Para where presence of police was urgently required.

The complainant recorded the information in the general diary of his police station vide MGK PS GD entry No. 7 and with the approval of his higher authority, the complainant along with Sub Inspector Ranjan Biswas rushed to the spot. Having arrived at the spot, complainant found that one Saiful Islam of about 18 years' of age was lying on the street near Sovaram Chow Para SB school in an alarming condition with several cut wound in his body and the injured was not able to speak anything. Seeing police, the local people who gathered there, left the place. The injured was shifted to Mungiakami primary health centre from where he was referred to GBP hospital. The injured succumbed to his injuries in GBP hospital at Agartala on the same day. Complainant further alleged that from his secret source, he came to know that the deceased along with his associates had stolen cattles from the area during the intervening night between 19.06.2021 and 20.06.2021 and while they were transporting the stolen cattles in vehicle bearing registration No. TR 01AL-1662 (Bolero Pickup Van), they were detained by the local people. When the deceased Saiful Isalm was trying to escape he was detained at Sovaram Chow Para and brutally manhandled by an agitated mob which caused his wounds and he succumbed to his injuries in hospital. The Complainant did not name anyone as accused in his FIR.

[3] On the basis of the said FIR, the case was registered and investigation was taken up.

[4] During investigation, police recorded the statements of some of the witnesses who witnessed the assault on Saiful Islam and saw his assailants. In the course of investigation, the post mortem examination report of the deceased and other materials were also collected by the investigating officer. On the basis of the incriminating materials collected during investigation, the investigating agency took initiative to arrest the applicant namely, Gagan Debbarma for which he has filed this application under section 438 Cr.P.C seeking protection from arrest and detention.

[5] Heard Mr. Kohinoor N. Bhattacharya, learned counsel appearing for the petitioner. Also heard Mr. R. Datta, learned P.P. representing the State respondent.

[6] It is contended by the counsel of the applicant that he is totally innocent and he does not have any involvement in the alleged assault of the deceased. Counsel submits that he is a student who has been pursuing his studies in Assam. Counsel also submits that accused Dinu Kumar Debbarma and another accused who were also arrested in connection with this case were released on bail. Therefore, by application of the principle of parity, the present applicant should also be released on bail. Counsel submits that he is not an FIR named accused and no prima facie case of the charge of murder has been made out against him and therefore there is no justifiable reason of his arrest and detention. Relying on the decision of the Apex Court in the

case of **Sanjay Chandra Vs. Central Bureau of Investigation** reported in **(2012) 1 SCC (Cri) 26: (2012) 1 SCC 40** counsel submits that the Hon'ble Apex Court has held that bail is the rule and jail is an exception. Counsel further submits that as per the said judgment of the Apex Court, the gravity of the charge alone cannot be a decisive ground to deny bail when there is no good reason to detain the accused in custody. Counsel has relied on paragraphs 40, 41, 42, 43 and 44 of the said judgment wherein the Apex Court has held as under:

"40. The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required.

41. This Court in Gurcharan Singh and Ors. Vs. State AIR 1978 SC 179 observed that two paramount considerations, while considering petition for grant of bail in non-bailable offence, apart from the seriousness of the offence, are the likelihood of the accused fleeing from justice and his tampering with the prosecution witnesses. Both of them relate to ensure of the fair trial of the case. Though, this aspect is dealt by the High Court in its impugned order, in our view, the same is not convincing.

42. When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is : whether the same is possible in the present case.

43. There are seventeen accused persons. Statement of the witnesses runs to several hundred pages and the documents on which reliance is placed by the prosecution, is voluminous. The trial may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that accused should be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there is no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. We do not see any good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet.

44. This Court, in the case of *State of Kerala Vs. Raneef* (2011) 1 SCC 784, has stated :-

"15. In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the respondent has already spent 66 days in custody (as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dicken's novel *A Tale of Two Cities*, who forgot his profession and even his name in the Bastille."

[7] Mr. R. Datta, learned P.P. on the other hand contends that a boy of 18 years of age was brutally murdered by a mob on suspicion that he was in the team of cattle lifters and the statements of the eye

witnesses has revealed the name of the present accused petitioner as one of the members of the mob who were found chasing the deceased and killing him. After killing said Saiful Islam, his assailants tried to cause disappearance of evidence by burying his body under earth. Mr. Datta, learned P.P submits that this is one of the gravest forms of offence known to the society in which the extra ordinary relief of pre-arrest bail under section 438 Cr.P.C. cannot be granted to the accused. Learned P.P. submits that other members of the mob who killed Saiful Islam are yet to be booked. In these circumstances, release of the applicant on pre arrest bail will frustrate the investigation of the case. Learned P.P. submits that principle of parity will not apply in this case because, though the charge is same, the circumstances under which the other accused were granted bail were totally different. Moreover, Dinu Debbarma and Ripan Debbarma were granted bail after they were arrested and interrogated by police. Learned P.P. submits that similar applications under section 438 Cr.P.C were also filed by the present applicant before the Sessions Judge and learned Sessions Judge after perusal of the case diary and having heard the counsel of the parties rejected the bail application of the applicant on merit. Learned P.P submits that in view of the gravity of the offence and the materials available on record, the bail application of Gagan Debbarma may be rejected.

[8] Perused the record and considered the submissions made by learned counsel appearing for the parties. Keeping in mind the law laid

down by the Apex Court in the case of **Sanjay Chandra (Supra)** which has been relied on by the learned counsel of the petitioner, this court is of the view that apart from the gravity of offence, there are other factors which are unfavourable to the accused applicant in this case. A young boy of 18 years was brutally lynched by a mob only on the suspicion that he was a cattle lifter even though no cattle was found in his possession. The eye witness version of some of the witnesses whose statements have been recorded by police in the course of investigation demonstrate that the present applicant was one of the members of the mob who was found chasing and lynching the deceased. Anticipatory bail under section 438 Cr.P.C. is an extra ordinary relief. The Apex Court in the case of **Siddharam Satlingappa Mhetre vs State of Maharashtra & Ors.** reported in **(2011) 1 SCC 694** has laid down the parameters for granting or refusing the anticipatory bail which is 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.**

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(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."

[9] Further in ***Jai Prakash Singh vs. State of Bihar*** reported in **(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

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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)."

[10] Having considered the given facts and circumstances of the case and keeping in mind the parameters laid down by the Apex Court in the judgments cited above, this court is of the view that the applicant cannot be granted pre arrest bail in this case.

[11] In the result, the bail application stands rejected and the matter is disposed of. Return the case diary.



JUDGE