

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

**Bail Appln.No. 30 of 2022**

Khongbantabam Hitler Singh,

**...PETITIONER**

-Versus-

1. The Officer-in-Charge, Imphal Police Station, P.O. & P.S.  
Imphal, Imphal West District, Manipur-795001.
2. Soram Tomba Singh,

**.... RESPONDENTS.**

BEFORE  
**HON'BLE THE ACTING CHIEF JUSTICE MR. M.V. MURALIDARAN**

For the Petitioners :: Mr. A. Golly, Advocate  
For the Respondents :: Mr. S. Niranjana, PP.

Date of Hearing and  
reserving Judgment & Order :: 08.02.2023

Date of Judgment & Order :: **14.02.2023**

**JUDGMENT AND ORDER**  
(CAV)

This petition has been filed by the petitioner under  
Section 439 Cr.P.C. to release him on bail in connection with FIR

No.169(5)2017 under Section 302/449/120-B IPC on the file of Imphal Police Station, who is under trial prisoner in Sessions Trial (CAW) Case No.1 of 2018 pending on the file of the Additional Sessions Judge (FTC) Crime Against Women, Manipur.

2. The case of the prosecution is that on 30.5.2017 at about 5.40 p.m., the complainant Soram Tomba Singh lodged a written complaint with the Officer-in-Charge of Imphal Police Station that on the same day at about 4.45 p.m., when he returned home in his car he found the gate closed from inside and despite horn, neither his wife nor his daughter came out to open the main gate. Thereafter, he crossed the fencing wall by climbing on the car parked near the gate and opened the main gate. Then, he parked the car inside the campus and when he tried to enter inside the house, he found both front doors were fastened with bolt from inside. So, he immediately moved towards the rear door on the northern side found it to be open. When he entered from the rear door, the complainant found his wife Soram (O) Lakhipyari Devi lying in a pool of blood on the floor. When he proceed to the next room, he found his daughter Monica Soram, who was pregnant for 8 months, also found lying on the floor in a pool of blood. Then, he opened the front door, ran out of the house and shouted for help and he again went

inside the house and checked their bodies. However, they were found dead with grievous injuries on their bodies. Immediately, he rushed to the police station and lodged the complaint. Based on the written complaint, the Imphal police registered an FIR No.169(5)2017 under Section 302/449/120-B IPC against unknown person and investigated the case. During investigation, on 2.6.2017, the investigating officer arrested the petitioner in connection with the said FIR and sent him to judicial custody.

3. Mr. A. Golly, the learned counsel for the petitioner submitted that the petitioner has been falsely implicated as an accused in this case and he was arrested by the respondent police on 2.6.2017 after calling him and detaining at Imphal Police Station in the name of suspicion of involving in the above said FIR case. He would submit that the main reason of suspicion of the police is that the petitioner once had love affairs with the victim namely Monica Devi before her marriage and her mother was against the relationship of the petitioner with her daughter and that the petitioner had been looking for opportunity of eliminating his lover and her mother.

4. The learned counsel further submitted that there are no reasonable grounds for believing that the petitioner had

committed the double murder as alleged by the prosecution. In fact, the trial Court had framed charges against the petitioner way back on 28.3.2018 and still the case is pending for examination of prosecution side witnesses. Though so far 10-11 prosecution side witnesses were examined, still the prosecution has to examine 12-13 more witnesses which will take long years and the prosecution is not co-operating with the trial Court for speedy disposal of the case.

5. The learned counsel for the petitioner urged that there is no possibility of concluding the trial in near future and the petitioner has been in judicial custody for more than 5 years and has been suffering mental agony and had also been facing many health problems inside the jail and, as such, detaining the petitioner in jail to an indefinite period is deprived of his fundamental rights provided under Article 21 of the Constitution of India.

6. The learned counsel then submitted that since investigation completed and the trial is in progress, there is no hurdle in enlarging the petitioner on bail and there will be no question of influencing to the witnesses or hamper and tamper on the prosecution case by the petitioner after his release from

judicial custody. The petitioner is ready to comply with the condition imposed upon by this Court while he is released on bail and that the petitioner is also ready to furnish sufficient surety to the satisfaction of the Court. Thus, a prayer has been made to release the petitioner on bail. In support, the learned counsel for the petitioner placed reliance upon the following decisions:

- (i) ***State of Kerala v. Raneef, (2011) 1 SCC 784***
- (ii) ***Md. Abdul Kalam @ Md. Kalama v. Officer-in-Charge, Women Police Station, 2021 (3) MnLJ 26.***

7. Per contra, Mr. S. Niranjan, learned Additional Public Prosecutor submitted that the Additional Sessions Judge (FTC) Crime Against Women, Manipur, in its order dated 28.3.2018 passed in ST (CAW) No.1 of 2018, came to the conclusion that there is prima facie evidence or suspicion against the accused person for committing murder and causing death of unborn child amounting to culpable homicide and, therefore, the learned Sessions Judge framed charges against the petitioner.

8. The learned Additional Public Prosecutor further submitted that in view of Covid-19 pandemic, normal Court proceedings have been put on hold since March, 2020 on

account of the country wide lockdown and normal Court proceedings/physical hearing have been restored only in March, 2022. In other words, the delay has been caused by forces beyond the control of the trial Court and the respondent police.

9. The learned Additional Public Prosecutor urged that the decision in the case of ***State of Kerala v. Raneef, (2011) 1 SCC 784*** relied upon by the learned counsel for the petitioner is not applicable to the case on hand, as the said decision was delivered before Covid-19 pandemic. Further, in the facts and circumstances of the instant case, the decision in the case of ***Md. Abdul Kalam @ Md. Kalama v. Officer-in-Charge, Women Police Station, 2021 (3) MnLJ 26*** relied on by the learned counsel for the petitioner is also not applicable to the case on hand. Since the investigation reveals involvement of the petitioner into the crime and since best part of prosecution witnesses have been examined before the trial Court, the petitioner cannot be enlarged on bail. If the petitioner is released on bail, he will definitely abscond. Thus, a prayer has been made to dismiss the bail petition.

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

11. The alleged crime said to be occurred on 30.5.2017. On the same day, the complaint was lodged and the FIR has been registered against unknown person. During investigation, the petitioner was arrested on 2.6.2017 and upon committal, charges were framed against the petitioner by the trial Court on 28.3.2018. According to the petitioner, out of 23 prosecution side witnesses, 11 witnesses were examined by the prosecution and the remaining witnesses are yet to be examined.

12. Earlier, the petitioner has filed Cril. Misc. (Bail) Case No.2 of 2019 before the Additional Sessions Judge (FTC) Crime Against Women, Manipur. By the order dated 28.5.2019, the said petition was dismissed. Again, the petitioner has filed Cril. Misc. (Bail) Case No.1 of 2020 before the trial Court on medical grounds. By the order dated 24.3.2020, the trial Court dismissed the petition. However, directed the authorities to provide necessary medical treatment to the petitioner to perform Orthopaedic surgery. The petitioner has also filed Cril. Misc. (Bail) Case No.3 of 2020 for grant of bail. By the order dated 14.12.2020, the said petition was dismissed by the trial Court. Again, the petitioner has filed Cril. Misc. (B) Case No.1 of 2022 before the trial Court and by the order dated 6.8.2022, the said petition was dismissed.

13. Now the petitioner has filed the present petition for bail contending that he has been in judicial custody for more than 5 years and he has been suffering mental agony and also facing health issues inside the jail. According to the petitioner, there is no possibility of concluding the trial in near future and detaining the petitioner to an indefinite period would hit the fundamental rights of the petitioner enshrined under Article 21 of the Constitution of India.

14. The tracking report of the case history regarding S.T. (CAW) No.1 of 2018 produced by the respondent clearly shows that the trial has started way back in the year 2018. Though most part of the period covers Covid-19, the materials on record would show that after lifting the lockdown and allowed the Courts to conduct the trial of the cases in the year 2021, no regular trial/day-to-day trial took place in the instant case. It is not the case of the prosecution that the petitioner has delayed the trial. On the other hand, the record reveals that due to failure of the prosecution in bringing the witnesses, the trial stands adjourned from time to time.

15. The very involvement of the petitioner in the commission of the alleged offence is disputed by the petitioner.



However, the would be considered only after trial. Therefore, at this stage, the merits of the crime cannot be gone into even though the case involved double murder of two women and unborn baby in the womb.

16. It is settled law that the grant or refuse 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. In the case on hand, as stated supra, the petitioner seeks bail mainly on the ground of delay in the trial, which started way back in the year 2018 itself. The pandemic started during March, 2020 and in between 2018 and March 2020, no sufficient progress had been taken to conclude the trial.

17. In **State of Kerala v. Raneef, (2011) 1 SCC 784**, the Hon'ble Supreme Court held:

*“15. In deciding bail applications an important factor which should be 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."*

18. It is settled law that the grant of bail ought not to be denied only on the perceived apprehension by the Court that the accused, if restored to liberty, will tamper with the evidence. There must be some *prima facie* evidence on record or reasonable and justifiable grounds to believe that in case the benefit of bail is extended to an accused, he is going to misuse his liberty or he would create conditions which are not conducive to hold a fair trial. The Hon'ble Supreme Court in various judgments has confirmed that "bail is the rule and jail is an exception. The object of bail is neither punitive nor preventive but is meant to secure presence of the accused during the trial.

19. In a catena of decision, the Hon'ble Supreme Court held that a procedure which keeps large number of people behind bars without trial, for long, cannot be regarded as "reasonable, just, fair" so as to be in conformity with the provisions of Article 21 of the Constitution of India. Detaining the under-trial prisoners in custody for an indefinite period is a gross violation of Article 21 of the Constitution of India.

20. In ***Sanjay Chandra v. CBI, reported in (2012) 1 SCC 40***, the Hon'ble Supreme Court held:

*“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The Courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.”*

21. As stated supra, the Hon'ble Supreme Court as well as this Court held that bail is the rule and committal to jail is an exception. The Courts have also observed that refusal of bail is a restriction on the personal liberty of an individual guaranteed under Article 21 of the Constitution of India.

22. The way in which the trial is conducted in the case on hand clearly shows that the trial is not likely to be concluded in near future. Therefore, as rightly argued by learned counsel for the petitioner, keeping the petitioner in custody indefinitely till the completion of trial would cause great hardship to him and also hits personal liberty. When the under-trial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution of India is violated. Therefore, the petitioner cannot be made to languish behind bars for a longer period of time.

23. The principles relating to grant or refusal of bail have been stated in the case of ***Kalyan Chandra Sarkar v. Rajesh Ranjan, reported at (2004) 7 SCC 528.*** In ***Kalyan Chandra Sarkar***, supra, the Hon'ble Supreme Court observed that the Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and

elaborate documentation of merits of the case need not be undertaken, there is a need to indicate in such orders reasons for *prima facie* concluding why bail was being granted, particularly, where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the Court granting bail to consider among other circumstances and the following facts also before granting bail; they are:

- (a) *The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.*
- (b) *Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.*
- (c) *Prima facie satisfaction of the Court in support of the charge.*

24. In ***Dataram Singh v. State of Uttar Pradesh and another, reported in (2018) 3 SCC 22***, the Hon'ble Supreme Court observed that a fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty.

However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences, but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correctional home is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

25. Thus, it is clear that grant or denial of bail is entirely the discretion of the Judge considering the bail application, but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by the Hon'ble Supreme Court as well as by the High Courts in the country.

26. To put it shortly, a humane attitude is required to be adopted by a Judge while dealing with the bail application. Even if the offence is a serious offence, requires a humane treatment

by the Court, humane treatment to all including an accused is requirement of law.

27. The cardinal principles of law for granting bail will not be affected when enlarging the petitioner on bail, inasmuch as the investigation has already been completed. As stated supra, the case is pending for examination of further prosecution witnesses. Therefore, the question of influencing to the witnesses or hamper and tamper of the prosecution case by the petitioner after his release does not arise.

28. In ***Union of India v. K.A.Najeeb, Criminal Appeal No.98 of 2021***, the Hon'ble Supreme Court observed that once it was made obvious that a timely trial would not be possible and that the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail.

29. Though the allegation against the petitioner is very serious in nature and he is alleged to have committed murder of two women and an unborn child in the womb, taking note of the fact that the petitioner is in jail since 2.6.2017 and also the trial of the case has not concluded yet for one reason or the other, in the interest of justice and in view of the undertaking given by the

petitioner that he shall remain present in person before the trial Court on the date fixed for the examination of the last prosecution witness as well as till the stage of examination of him under Section 313 Cr.P.C. and its final order, this Court is of the view that the petitioner can be enlarged on bail in the given facts and circumstances of the case, however, subject to certain conditions.

30. Accordingly, Bail Application 30 of 2022 is allowed and the petitioner is ordered to be enlarged on bail in connection with the FIR No.169(5)2017 under Section 302/449/120-B IPC on the file of Imphal Police Station, who is an under trial prisoner in Sessions Trial (CAW) Case No.1 of 2018 pending on the file of the Additional Sessions Judge (FTC) Crime Against Women, Manipur, subject to the petitioner furnishing a personal bond in the sum of Rs. 50,000/- (Rupees Fifty Thousand) with two local sureties each in the like sum to the satisfaction of the learned Additional Sessions Judge (FTC) Crime Against Women, Manipur with the following conditions:

- (i) *The petitioner shall not leave the place of his residence without the permission of the trial Court and shall ordinarily reside at a*



*place of his residence and the complete address of such place shall be furnished to the learned Additional Sessions Judge (FTC) Crime Against Women, Manipur at the time of release.*

*(ii) The petitioner shall appear before the Additional Sessions Judge (FTC), Crime Against Women, Manipur weekly once i.e. every Monday at 10.30 a.m., apart from all hearing dates.*

*(iii) If the petitioner has passport, he shall also surrender the same to the Additional Sessions Judge (FTC), Crime Against Women, Manipur.*

*(iv) The petitioner shall not contact nor visit nor threaten nor offer any inducement to any of the prosecution witnesses, particularly the complainant and his family members.*

*(v) The petitioner shall not tamper with evidence nor otherwise indulge in any act*

*or omission that would prejudice the proceedings in the matter.*

*(vi) The petitioner is directed to co-operate the trial Court for speedy disposal of the case.*

*(vii) It is clarified that if the petitioner misuses the liberty or violate any of the conditions imposed upon him, the prosecution shall be free to move this Court for cancellation of bail.*

*(viii) Any observations made hereinabove shall not be construed to be a reflection on the merits of the case and shall remain confined to the disposal of the present bail applications.*

*(ix) The Additional Sessions Judge (FTC) Crime Against Women, Manipur is directed to expedite the trial and dispose of Sessions Trial (CAW) Case No.1 of 2018 as early as possible, preferably within a*

*period of three months from the date of receipt of a copy of this order.*

*The Registry is directed to communicate this order to the Additional Sessions Judge (FTC) Crime Against Women, Manipur for speedy disposal of Sessions Trial (CAW) Case No.1 of 2018 and report before this Court.*

**ACTING CHIEF JUSTICE**

**FR/NFR**

*Sushil*