

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

Anticipatory Bail No.7 of 2014

1. Potsangbam Wangba Singh, aged about 40 yrs.
s/o late P.Ibohal Singh, resident of Haobam Marak
Ngangom Leikai, P.O. Imphal and & P.S. Singjamei,
Manipur.
2. Salam Priyobarta, aged about 38 yrs. s/o
S.Thambal Singh, resident of Naoremthong
Laishram Leirak, P.O. & P.S. Lamphel
3. Heikrujam Devraj Meitei, aged about 38 yrs.
H.Rajen Singh, resident of Keishamthong
Thangjam Leirak, P.O. & P.S. Imphal.

.....Petitioners

-Versus-

The State of Manipur.

.....Respondent

BEFORE
THE HON'BLE MR.JUSTICE N.KOTISWAR SINGH

For the Petitioners	:: Mr.P.Tomcha, Advocate
For the Respondent	:: Mr.R.S.Reisang, P.P.
Date of hearing	:: 19.5.2014
Date of Judgment & Order	:: 20.5.2014

JUDGEMENT AND ORDER(CAV)

Heard Mr. P. Tomcha, learned counsel appearing for the petitioners and Mr. R.S.Reisang, learned senior P.P. appearing for the State.

[2] This is the second pre-arrest bail application under section 438 Cr.P.C., first of which was filed before the learned Sessions Judge, Manipur East, which was dismissed. The learned Sessions Judge, Manipur East, while dismissing the first application under section 438 Cr.P.C. observed as follows:-

"6. On perusing the case diary, I find that the accused/petitioners had contacted one Ishore Sonuwal and paid a sum of Rs.21,00,000/- upfront for admitting the son/daughter of the complainants at MIMS but later on found out that the admission was not materialised. Further, I find that the accused/petitioners could not find the said Ishore Sonuwal to settle the matter. On a bare perusal of the case diary, it is found that the accused published advertisements in popular local dialies for arranging MBBS

Admissions in various medical institutes in India, China and Bangladesh. Two Advertisements published in Manipuri newspaper "POKNAPHAM" dated 10.7.2012 and 22.7.2012 read as follows:

<p>FINAL CALL FOR MBBS ADMISSION</p> <p>Lowest Capitation fee for India starting from 14 lakhs. Only 2 seats left for the following Colleges/Institutes: UP, MP, Karnataka, Andhra Pradesh & Delhi. Lowest Full Package for China starting from 13 lakhs. Lowest Full Package for Bangladesh starting from 22 lakhs for BDS @ 1.3 lakhs per annum. Those students who had already booked are requested for confirmation on or before 13th July, 2012.</p> <p style="text-align: center;">For Details Contact, ARRIRANG EDUCATION & JOB CONSULTANT 9862722682/8974581749/9856287940 Arirang House, Singjamei Traffic Island</p>
<p>GOLDEN OPPORTUNITY FOR MBBS ADMISSIONS IN SIKKIM MANIPAL UNIVERSITY</p> <p>Only 4 seats remaining First Book First Admission Last Date for Seat Confirmation 24th July, 2012 Capitation Fee : Rs.14 lakhs only</p> <p style="text-align: center;">For Details Contact, ARRIRANG EDUCATION & JOB CONSULTANT 9862722682/8974581749/9856287940 Arirang House, Singjamei Traffic Island</p>

7. A mere glance on the above two advertisements makes it clear that the accused have been making an imputation of assured MBBS/BDS seats on payment of capitation fees and other fees in the Medical Colleges /Institutes. The word "CONFIRMATION" mentioned in the advertisements is very crucial and prospective students and parents are misled by this word and on the assurance made a large sum of money has been deposited with the accused. The advertisement does not clarify that the accused are merely commission agents with no assurance for admissions. The various money receipts seized also indicate that the payment have been made towards "MBBS Admission". The necessary ingredients for the offence of cheating as provided under section 420 IPC are present in the case in hand. It may be pertinent to point out that payment of capitation fee is illegal as held by the Apex Court in a catena of cases. It is another aspect as to how large amount of sums have been paid by the complainants to the accused. Investigation is also at the early stage. On perusal of the bail reports, it seems that the accused appeared before the I.O. on the specific directions of this Court and not voluntarily. Since such type of frauds is

prevalent in the society, I am not inclined to release the accused on anticipatory bails.

8. Accordingly, the bail application is dismissed. Interim pre-arrest bail granted vide order dated 5.9.2013 is vacated."

[3] It is the case of the petitioners that no case has been made out under section 420 IPC so as to warrant arrest in the present case. According to the petitioners, the complaint was filed against the petitioners before the Superintendent of Police, Imphal West District by four complainants under section 420 IPC read with 34 IPC alleging that an advertisement was published in the local daily newspaper by a firm called Arirang Educational & Job Consultant located at Singjamei inviting applicants from the interested parties for admission in the MBBS course in Sikkim at the Manipal Institute of Medical Science on payment of capitation fees of Rs.14 lakhs. As per the said advertisement, the last date of seat confirmation was mentioned as 24th July, 2012 and there were only four seats available. Accordingly, the complainants contacted the petitioners who asked them to deposit the aforesaid amount of Rs.14 lakhs each. Accordingly, the complainants altogether deposited a sum of Rs. 44,40,000/- on various dates which was claimed to be required to be deposited with the Manipal Institute of Medical Science for the purpose of admission. The complainants claimed that they were informed by the petitioners that their wards had been selected for admission in the said Institute. However, when the complainants along with their wards with the petitioners went to Manipal Institute of Medical Science for admission, it has been revealed that there could not have been such admission and the complainants claimed that they were cheated by the petitioners by making them part with their money on false representation of the petitioners. According to the complainants, after a lot of persuasion, the petitioners somehow refunded Rs.6 lakhs to one of the complainants and another Rs.8 lakhs to another complainant but in respect of the two other complainants, no money has been refunded. On the basis of said complaint, an FIR was instituted being FIR No.176(9)2013 u/s 420/34 IPC.

[4] Being apprehensive of being arrested in the said case, the petitioners approached the learned Sessions Judge, Manipur East by filing Cril. Misc. (AB) Case No. 140 of 2013. Learned Sessions Judge, on considering the materials, rejected the bail application as mentioned above. The learned counsel for the petitioners have contended before this Court that this is a simple case of recovery of money and ingredients of Section 420 IPC are not made out and as such, the petitioners are entitled to be released under section 438 Cr.P.C.

[5] I have gone through the case diary as well as the bail objection report submitted by the learned P.P.

It has been submitted by the learned P.P. that two of the petitioners, namely, the petitioner No.2, Salam Priyobarta and the petitioner No.3, Heikrujam Devraj Meitei had been already arrested on 06.5.2014 during the pendency of this application.

As per the materials available so far and also as per the statements made by the said petitioners No.2 and 3 in course of the investigation, the role of the petitioner No.1 needs to be properly investigated as he seems to have played a vital role in the entire transactions and the petitioner No.1 seems to be the person who was organising the collection of money and also payment to one Ishore Sonuwal, who was known only to the petitioners. Considering the stage of the investigation and materials so far collected by the Investigating authorities, it will be premature to give a finding at this stage that ingredients of Section 420 IPC are not at all present in the present case and this Court does not intend to interfere with the investigation so far being conducted by the Investigating authorities by granting the relief claimed by the petitioners under section 438 Cr.P.C.

[6] Learned counsel for the petitioners, in support of his contention, has relied on a decision of this Court rendered in the case of **Shri Kh.Dhana Singh vs. State of Manipur & anr.** reported in **2013 Cril.LJ 4327**. This Court is of the view that the aforesaid judgment will not be applicable in the present case as the said case is related to a dispute arising out of the non-repayment of a loan where there was no element of criminality involved. The

present case is not a simple case of non-repayment of certain amount stated to have been taken by the petitioners. The amounts were given to the petitioners by the complainants on the promise of getting their wards admitted in a medical institute and as such, this Court is of the view that materials facts in the said case of **Kh.Dhana (supra)** being different from the present case, the said decision will not be applicable in the present case.

[7] Mr. R.S.Reisang, learned P.P. has relied on the decision of the Gauhati High Court reported in **Kushal Duwari vs. State of Assam; 2009 (2) GLT 926** in which it has been held that successive applications for pre-arrest bail within a short period without any change in fact situation, could not be maintainable. In the present case, the application under section 438 Cr.P.C. was rejected by the learned Sessions Judge, Manipur East on 15.3.2014 and no new grounds have been pleaded before this Court in the present application. On the contrary, the development which has so far taken place after the arrest of the two petitioner No.2 and 3 indicates that further investigation needs to be made as regards the role of the petitioner No.1.

[8] In view of the above, this Court is of the view that there is no merit in this application and the same is dismissed.

JUDGE

FR/NFR

Opendro(rt)