

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. 38 OF 2018

CHAMPION R. SANGMA ... Petitioner

VERSUS

THE STATE OF MEGHALAYA ... Respondent

O R D E R

*Rule Nisi.*

The writ petition is filed under Article 32 of the Constitution with the following prayer:

“(a) Issue a writ or order or direction in the nature of habeas corpus or any other appropriate order directing the production of the petitioner in Court and directing him to be set at liberty in accordance with law.”

Brief facts leading to the filing of this petition may be taken note of at this stage.

As per the respondent, the petitioner is the Chairman and Commandar-in-Chief of Garo National Liberation Army (GNLA), though the learned counsel appearing for the petitioner denies the same. Be that as it may, there are several criminal cases which are registered against the petitioner. It is also a matter of record that in most of these cases, he is either acquitted or discharged. In some of the cases which are still pending, he has been granted bail except in Case GR No. 72/2011 in which chargesheet No. 11/2012 dated 29.02.2012 has been filed. This is a case

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which is registered under Section 364A read with Section 34 of the Indian Penal Code, 1860.

It appears that after the registration of FIR in the aforesaid case some time in the year 2011, the petitioner could not be arrested as, according to the respondent, he had absconded. He was declared an absconder as well and chargesheet was filed in the year 2012. In the aforesaid situation, the record of the said case, which was summoned by this Court, revealed that the last order was that of 01.10.2012 when the case was adjourned to 13.12.2012. Thereafter, there were no proceedings in this case.

When the case rested at that stage in the aforesaid matter as mentioned above, the petitioner was arrested in relation to his involvement in other cases as well. However, as already noted, the petitioner has been granted bail in all such cases by the concerned Courts. As on January 2018, the position was that the petitioner had been granted bail in the pending cases against him and, therefore, in normal course, he should have been released from custody. Insofar as GR No. 72/ 2011 is concerned, no steps were taken to arrest him till that time. However, curiously, on 24.01.2018, an application was made by the prosecution in the Court of Additional District Magistrate (Judicial), Resubelpara, North Garo Hills, Meghalaya. It so happened that District Williamnagar in Meghalaya was further bifurcated into two districts. The records of the aforesaid

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case at that material time were with the concerned Magistrate at Williamnagar. When the application was made by the prosecution on 24.01.2018 in the Court of Additional District Magistrate (Judicial) at North Garo Hills, the Court was not in possession of any records. The records at Williamnagar was yet to be transmitted to the Additional District Magistrate (Judicial) at North Garo Hills.

In this application, the prosecution stated that the petitioner had submitted a bail application in the Court and a request was made that the said bail application be not accepted. Orders dated 24.01.2018 were passed by the Additional District Magistrate (Judicial) whereby the aforesaid prayer of the prosecution was allowed. The operative portion of the said order reads as under:

“Considering the above facts and circumstances, the prayer of O/C Mendipathar PS is hereby allowed. This order has been sent to the Superintendent of District Jail, East Khasi Hills, Shillong for necessary action. The District & Session Court, East Garo Hills, Williamnagar is hereby informed to sent all the records to this court, Resubelpara as the case has already been Charge Sheeted vide Charge Sheet No. 11/2012 dated 29/02/2012 and sent to your court by the concerned I/O SI Nizol Roy of Mendipathar PS for Trial.”

Three significant aspects need to be highlighted at this stage. These are:

- (1) Though the prosecution has moved an application before the Court of Additional District Magistrate (Judicial), North Garo Hills, opposing the bail

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application made by the petitioner in the Court, in fact, no such bail application was ever filed by the petitioner. There was no question of filing any bail application in the first place as the petitioner was never arrested in this case.

- (2) When the aforesaid application of the prosecution purportedly opposing the bail application of the petitioner was filed, the learned Additional District Magistrate (Judicial) did not have any records of the case except the application which was put up before him and the averments made therein.
- (3) No notice of this application was ever served upon the petitioner. The application was considered *ex-parte* and treating the averments made in the said application as gospel truth, the prayer made in the application was allowed.

The effect of the aforesaid order passed by the Additional District Magistrate (Judicial) is that the petitioner remains in custody even when he is not arrested in the aforesaid case and has already been granted bail in all other cases.

It is clear from the aforesaid that insofar as order dated 24.01.2018 is concerned, it is *non-est*, nullity and without any jurisdiction. Even if we presume, as contended

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by the learned counsel for the respondent, that the application dated 24.01.2018 was not happily worded, the main purpose of the application was to request the Court not to release the petitioner. Such an application was not admissible under any provision of the Code of Criminal Procedure, 1973.

We repeatedly asked the learned counsel for the respondent to point out as to under what provision, in the aforesaid circumstances, this application should be filed when there was no formal arrest of the petitioner, though nobody prevented the respondent to arrest the petitioner in the aforesaid case. Learned counsel for the respondent could not give any reply to the aforesaid question.

Once order dated 24.01.2018 is treated as an order without jurisdiction, the custody of the petitioner, who has otherwise been released on bail in all other cases, is clearly illegal. We have not understood the manner in which the prosecution has acted in this case. Even if the allegations contained in Chargesheet No. 11/2012 dated 29.02.2012 in the aforesaid GR No. 72/2011 are serious, the respondent is supposed to act in accordance with law. The manner in which the respondent proceeded in this matter is clearly impermissible, violative of the rule of law and offends the petitioner's right under Article 21 of the Constitution as he has been detained in custody by adopting totally faulty and illegal process.

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In these circumstances, we allow this writ petition and make the Rule absolute and direct that the petitioner shall be released forthwith. We make it clear that we have not restrained the respondent from taking any appropriate legal steps in the aforesaid FIR/chargesheet, which are permissible in law.

Original records from the lower Court were brought by the learned counsel for the respondent, which, after perusal, are returned to the Counsel.

....., J.  
[ A.K. SIKRI ]

....., J.  
[ ASHOK BHUSHAN ]

New Delhi;  
March 20, 2018.

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ITEM NO.2

COURT NO.6

SECTION X

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

Writ Petition (Criminal) No. 38/2018

CHAMPION R. SANGMA

Petitioner(s)

VERSUS

THE STATE OF MEGHALAYA

Respondent(s)

(With IA No.22697/2018-STAY APPLICATION)

Date : 20-03-2018 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI  
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Petitioner(s)

Ms. Shahrukh Alam, Adv.  
Ms. Liz Mathew, AOR

For Respondent(s)

Mr. Ranjan Mukherjee, Adv.  
Mr. Daniel Stone Lyngdott, Adv.  
Mr. Subhro Sanyal, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The writ petition is allowed in terms of the signed  
order.

(NIDHI AHUJA)  
COURT MASTER

(MALA KUMARI SHARMA)  
COURT MASTER

[Signed order is placed on the file.]