

GAHC030000262023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./5/2023

Sh. Zaro
S/o Thaoma (L)
R/o Sabawngpui, Matupui District, Myanmar
P/A Ulkual, Lawngtlai District, Mizoram.

VERSUS

The State of Mizoram and 2 Ors.
r/b the Secretary to the Govt. of Mizoram, Home Department, Aizawl, Mizoram.

2:The Superintendent of Police
Lawngtlai District

3:The Officer-in-Charge
Saiha Police Statio

Advocate for the Petitioner : Mr. Johny L Tochhawng, Legal Aid Counsel

Advocate for the Respondent : P.P./Addl.PP, Mizoram

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
ORDER

Date : 10-03-2023

Heard Mr. Johny L. Tochhawng, learned Legal Aid Counsel for the petitioner along with Ms. Mary L. Khiangte, learned Additional Public Prosecutor for the State respondents.

This is a petition under Section 439 Cr.P.C r/w Section 440 Cr.P.C and Section 482 Cr.P.C for the reduction/alteration of the bail conditions imposed by the learned Special Judge under POCSO Act, 2012 vide Order dated 08.07.2022 in Bail Application No. 28/2022, arising out of LTI PS Case No. 4/2021 dated 23.01.2021 under Section 6 of POCSO Act r/w Section 14 Foreigner's Act.

Brief facts of the case is that on 23.01.2021, an FIR was submitted by Pi Vanlalthlui W/o Lalrinnggheta of Rulkual, Lawngtlai District stating that on the morning of 22.01.2021 at around 2:00 AM, her daughter X (7 years) was sexually assaulted by the petitioner/accused and subsequently, a case was registered as LTI PS Case No. 4/2021 dated 23.01.2021 under Section 6 of POCSO Act r/w 14 Foreigner's Act against the petitioner/accused.

The petitioner on earlier submitted a bail application before the Court of Special Judge under POCSO Act, 2012, Siaha, Mizoram. The bail application was registered as Bail Application No. 28/2022 and the learned Court had granted bail vide Order dated 08.07.2022. However, the Trial Court had imposed the condition that bail was granted with a bail bond of Rs. 1,00,000/- and a surety of the like amount, who was a regular Government servant not below the rank of an LDC.

The learned Legal Aid Counsel submits that due to the stringent bail bond and conditions imposed, the petitioner is still languishing in jail since he is poverty stricken and cannot find a bailer, who is a Government servant not below the rank of an LDC. That the petitioner/accused is suffering from many ailments and is in poor health condition. He was in fact admitted at the Civil Hospital, Siaha because of his poor health that although the petitioner/accused was charged with Foreigner's Act, there is no chance to flee away, since at present all his relatives are residing at Siaha District due to the riots and trouble in their village caused by Myanmar Military.

Ms. Mary L. Khiangte, learned Additional Public Prosecutor, on the other hand mentions that since there is a possibility of the petitioner/accused fleeing from justice, even if the petitioner/accused is not be able to find a surety, who is a Government servant not below the rank of an LDC, it may be prudent that the bailer surety be someone who is a permanent resident of Siaha District duly certified by the Village Council.

On hearing both the parties, this Court finds the Division Bench of this Court in its Order dated 06.09.2022 in *XXX Guwahati Vs. In Re- The State of Assam & Ors.* in WP(C) (Suo Motu) No. 8/2018 has noted that "*In light of the aforesaid, the respective learned counsels appearing for the respective states shall produce the data of further progress in the matter and see that the jail inmates, who have already been granted bail and are still languishing in jail, are released.*"

Section 440 Cr.P.C also provides that "*The amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive.*"

In view of the above, this Court is of the considered opinion that the entire object of imposing stringent conditions is to ensure that the under trial, on his release on bail, does not flee during trial. Thus, this Court finds that the petitioner/accused has been languishing in jail since 23.01.2021, due to the stringent conditions imposed though the learned Trial Court had granted him bail. Thus, this Court finds it fit to alter the conditions imposed by the Trial Court in its Order dated 08.07.2022 in Bail Application No. 32/2022, while granting bail to the petitioner to the extent that the bail amount shall be reduced from Rs. 1,00,000/- (Rupees one lakh) only to Rs. 80,000/- (Rupees eighty thousand) only and the surety of the like amount shall be a permanent resident of Siaha District duly certified by a member of the Village Council

instead of "Government servant not below the rank of an LDC". The bail bond shall be executed by the learned Trial Court. The release of the petitioner/accused shall also be under the condition that he shall attend Court regularly and shall not attempt to tamper with the evidence or remaining witnesses during trial. Accordingly, Criminal Revision Petition No. 5/2023 stands allowed and disposed.

In appreciation of the assistance provided by Mr. Johnny L. Tochhawng, learned Legal Aid Counsel, his fee is fixed at Rs. 7500/- (Rupees seven thousand five hundred) only, which is to be paid by the Mizoram State Legal Services Authority on production of the copy of this order.

JUDGE

Comparing Assistant