

GAHC030000312023



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

**Case No. : Crl.Rev.P./6/2023**

Sh. Safian Uddin Sheikh and Anr.  
S/o Latif Ali Sheikh  
R/o Bilaipur, PS Lala, Hailakandi District, Assam.

2: Sh. Jahir Uddin Sheik

VERSUS

The State of Mizoram and Anr.  
r/b the Secretary to the Govt. of Mizoram, Home Department, Aizawl, Mizoram.  
2:The Officer-in-Charge  
Vairengte P

**Advocate for the Petitioner** : Mr. Joseph Lalchhanhima Renthlei

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

**BEFORE**  
**HONOURABLE MRS. JUSTICE MARLI VANKUNG**  
**ORDER**

**Date : 29-03-2023**

Heard Mr. Joseph L. Renthlei, learned Legal Aid Counsel appearing for the petitioners along with Mrs. Linda L. Fambawl, learned Additional Public Prosecutor.

**2.** This is an application filed under Section 482 r/w Section 440 of the Criminal Procedure Code, wherein the petitioner prays for alteration/reduction of the bail condition of the applicant. He submits that before coming to this Court, the applicant

had preferred a similar application before the learned Additional District & Sessions Judge/Fast Track Court, Kolasib through Criminal Misc. Appln. No. 7/2022, but the same was rejected on 05.09.2022 on the grounds that the learned Lower Court had no jurisdiction as per Section 440 Cr.P.C, since the bail was granted by the Additional District & Sessions Judge/Fast Track Court, Kolasib. The learned counsel submits that the Court of Additional District & Sessions Judge/Fast Track Court, Kolasib in its Order dated 02.09.2021 in Bail Application No. 19/2022 had granted bail to the applicant. However, the terms of the bail bond was that the applicant/accused should furnish a bail bond of Rs. 70,000/- (Rupees Seventy Thousand only) with one reliable surety who must be a regular Government servant in a regular department posted in Kolasib duly certified by the head of the department concerned.

**3.** The learned Legal Aid Counsel submits that even though bail was granted, the applicant cannot furnish such surety till date despite all his effort as he is not a resident of Kolasib. He is therefore in judicial custody till date. He further submits that charge sheet has been filed in connection with the present case and there is no danger of the applicant interfering with the investigation of the case at this stage. That since bail has been granted to the applicant imposing such stringent conditions which cannot be met by the applicant, this has caused him much difficulty. In support of his submission, the learned counsel has cited the following cases:-

***(i) Moti Ram & Ors. Vs. State of Madhya Pradesh, reported in (1978) 4SCC 47.***

***(ii) Moinul Hoque Vs. The State of Assam passed in Crl.Pet. No. 173/2021, Order dated 16.03.2021.***

***(iii) XXX Guwahati, Assam Vs. In Re- The State of Assam & 7 Ors., passed in WP(C) (Suo Moto) No. 8/2018, Orders dated 06.09.2022 & 15.12.2022.***

4. Mrs. Linda L. Fambawl, learned Additional Public Prosecutor for the State respondents in all fairness submits that since bail has been granted to the applicant on 02.09.2021, she does not have any strong objection, however, she submits that if the appellant is to be released on bail by altering the conditions imposed by the learned Trial Court, the surety may be a person, who is a permanent residence of Kolasib District duly certified by the Village Council. That it is necessary to ensure that the applicant who is charged under Section 302 IPC is not abscond during trial.

5. Having heard the submission made by both the parties, it is seen that the case against the appellant is for an alleged involvement of the commission of an offence under Section 302 r/w 34 IPC. A written FIR was submitted by the informant to the effect that on 26.11.2020 at 12:00 midnight, one Adbul Monaf of Aitlang Phai, Vairengte was killed by being chopped on his head inside his Jhum hut. On investigation the applicant/accused was arrested on 13.02.2021 and was granted bail on 02.09.2021 on the conditions that he surrender a bail bond of Rs. 70,000/- (Rupees Seventy Thousand) only each with one reliable surety who must be a regular Government Servant in a regular department posted in Kolasib duly certified by the Head of Department concerned.

6. The Division Bench of this Court in its order dated 06.09.2022 in **XXX Guwahati versus In Re- The State of Assam & Ors. (Supra)** 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.*"

7. Section 440 Cr.P.C 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.

8. 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 it fit to alter the conditions imposed by the Trial Court on 02.09.2021 while granting bail to the petitioners to the extent that the bail bond amount shall be reduced from Rs. 70,000/- to Rs. 60,000/- each and with a surety of the like amount, the sureties shall be a permanent resident of Kolasib District duly certified by a member of the Village Council. The bail bond shall be executed by the learned trial court. The release on bail shall also be under the condition that the petitioner shall attend court regularly and shall not attempt to tamper with the evidence or influence the remaining witnesses during trial.

**9.** Accordingly, the CrI.Rev.Pet. No. 06/2023 stands allowed and disposed.

**10.** In appreciation of the assistance provided by Mr. Joseph L. Renthlei, Legal Aid Counsel his fee is fixed at Rs. 7,500/- (*Rupees Seven Thousand Five Hundred*) only to be paid by the Mizoram State Legal Services Authority on production of the copy of this Order.

**JUDGE**

**Comparing Assistant**