

GAHC030000322023



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

Case No. : Crl.Rev.P./7/2023

Sh. Jatan Joy Teipera and Anr.
S/o Sukha Kumar
R/o Malirai Para, Kamalpur District, Assam. 2: Sh. Ranjit Tud

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, Legal Aid Counsel

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

B E F O R E
HON'BLE MRS. JUSTICE MARLI VANKUNG
O R D E R

27.03.2023
(Monday)

Heard Mr. Joseph Lalchhanhinma Renthlei, learned Legal Aid Counsel appearing for the petitioner alongwith Ms. Mary L. Kiangte, learned Addl. Public Prosecutor for the State respondents.

2. This is an application submitted under Section 440 Cr.P.C R/w Section 482 of Cr.P.C. for the reduction/alteration of bail conditions imposed by the learned Addl.

District & Sessions Judge, Kolasib vide Order dated 02.09.2020 in Bail Application No.42/2020 r/w Section 34 u/s 302 IPC.

3. The brief facts of the case is that the petitioners were arrested on 02.09.2020 for allegation of committing offence under section 302/34 I.P.C. on their suspected involvement with the death of a Chiten Joy S/o Don Joy of Durgapur and whose death body was found on 21.05.2020 in a fish pond belonging to Pu Saihuala of Kualmawi, Bilkhawthlir.

4. The case was registered as VRT PS C/No. 24/2020 under Section 302/34 I.P.C. The petitioners had earlier submitted a bail application before the Court of Additional District & Sessions Judge, Kolasib, Mizoram and the bail application was registered as Bail Application No.42/2020. However, though the bail was granted to the petitioners vide Order dated 02.09.2020, the learned Trial Court had granted bail with a bail bond of Rs.60,000/- and with the condition that they shall produce a surety of the like amount who shall be a regular government servant not below the rank of LDC in a regular Government Department(s) posted in Kolasib and duly certified by the Head of the Department concerned.

5. The Legal Aid counsel for the petitioner submits that due to the stringent bail bond and conditions imposed by the learned Trial Court the petitioners who were granted bail on 02.09.2020 they are still in jail, since they are poverty stricken and has no close relatives residing in Kolasib who is not below the rank of LDC.

6. The Learned Legal Aid counsel submits that the stringent conditions imposed by

the Trial Court while granting bail on 02.09.2020 to the petitioners may be reduced or altered so that they can be released from jail. That the petitioners will not abscond or tamper with the evidence if out on bail.

7. The learned Legal Aid Counsel has also cited the decision of the Apex Court in **Moti Ram & Others vs. State of M.P.** reported in **(1978) 4 SCC 47** the Order of this Court in **Moinul Hoque Vs. The State of Assam in Crl. Pet. 173/2021.**

8. Ms. Mary L. Khiangte, learned Addl. Public Prosecutor has not objected to the reduction of the conditions imposed by the learned Trial Court.

9. Having heard the submissions made by both the parties, and on perusal of the documents on record, it is seen that the case is in the evidence stage. The petitioners are charged under section 302/34 I.P.C. has been languishing in jail for over 2 (two) years after being granted bail which makes it clear that the petitioners cannot meet the stringent bail bond conditions imposed by the trial court.

10. The Division Bench of this Court in its order dated 06.09.2022 in **XXX Guwahati .Vs. In Re-The State of Assam and others in W.P.(C) (Suo Moto) No.8 of 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."*

11. 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.

12. 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 02.09.2020 while granting bail to the petitioners to the extent that the bail bond amount shall be reduced from Rs.60,000/- to Rs.50,000/- each with sureties of the like amount and *'the sureties shall be a permanent resident of Kolasib District duly certified by a member of the Village Council instead of "LDC or above"'*. The bail bond shall be executed by the learned trial court. The release on bail shall also be under the condition that the petitioners shall attend court regularly and shall not attempt to tamper with the evidence or influence the remaining witnesses during trial.

13. Accordingly, the CrI. Rev. P. No.07/2023 stands allowed and disposed.

14. In appreciation of the assistance provided by Mr. Joseph Lalchhanhima 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