

GAHC030000542023



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

Case No. : I.A.(Crl.)/9/2023

Sh. Lalremthanga
S/o K. Palira (L)
R/o Lunglei, Chanmari, Mizoram.

VERSUS

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

2:Sh. B. Lalinghakliana (Inspector)
S/o B. Robula
R/o Armed Veng
Aizawl
Mizoram

Advocate for the Petitioner : Mr B Lalramenga
Advocate for the Respondent : P.P./Addl.PP, Mizoram

Linked Case : Crl.A./2/2023

Sh. Lalremthanga
S/o K. Pahlira (L)
R/o Lunglei
Chanmari
Mizoram.

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

Linked Case : I.A.(Crl.)/3/2023

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Mizoram

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

Date : 29.03.2023

Heard Mr. B. Lalramenga, learned counsel for the applicant along with Ms.

Mary L. Khiangte, learned Additional Public Prosecutor.

This is an application filed under Section 389(1) Cr.P.C for suspension/stay of the execution of the impugned Judgment & Order dated 22.11.2022 and the Sentence Order dated 23.11.2022 passed by the Special Judge, Mizoram, Aizawl in SR(PCA) No. 4/2018 arising out of ACB PS Case No. 6/2015, during the pendency of the connected appeal and for releasing the applicant/appellant on bail.

The learned counsel for the applicant submits that the applicant though convicted under Sections 420/120B/468/471 IPC and under Section 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act, 1988 and sentenced to undergo 5 (five) years Rigorous Imprisonment each against Sections 420/120B/471 IPC, Sections 468/120B/471 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 with a fine of Rs. 15,00,000/- (Rupees Fifteen Lakhs only) against all the sentences, i.d., another imprisonment of 15 (fifteen) years, the applicant was innocent of the charges.

He submits that the prosecution story in brief is that MAMCO which is originally an Agricultural Marketing Organization had diversified its activities into the field of civil construction and entered into a contract with Kendriya Vidyalaya Sangathan (KVS) for empanelment as implementing agency of its school project at Lunglei and Champhai in Mizoram, Udalguri in Assam and Ukhrul in Manipur. Under the terms of agreement between MAMCO and KVS dated 26.09.2012, the MAMCO would received 7% as service charges over the actual cost of work, the applicant is charged for committing wrong acts of the deceit and cheating by collecting money from prospective contractors and stationary suppliers by putting contract works as bait as under:-

“(i) Rs. 25 Lakhs from Pu Lalhriatpuia.

(ii) Rs. 45 Lakhs from Pu F. Vanenga.

(ii) Rs. 35 Lakhs from Pi K. Lalrengpuii.

(ii) Rs. 66 Lakhs from SR Construction.

(ii) Rs. 44 Lakhs from Anita Anthony.

(ii) Rs. 8 Lakhs from Pi Lalthangpuii.

(ii) Rs. 45 Lakhs from Keibamdi Panmei.

(ii) Rs. 118 Lakhs from Pu Vanlalrova.”

The learned counsel for the applicant further submits that the evidences on record do not warrant the conviction against the applicant under Sections 120B/420/468/471 of IPC and also under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act. The learned counsel has led this Court to the evidence deposed by PW Nos. 3, 7, 10, 11 & 12 and submits that from the evidence adduced by the said prosecution witnesses, it can be construed that even though PW No. 3, PW No. 7, PW No. 8 & PW No. 11 had stated that they had given money to the applicant, there was no intention to cheat the said PWs by the applicant and further some of the persons who are said to have given money to the applicant were not examined by the prosecution.

The learned counsel also submits that from the statement of the prosecution witnesses, it can be seen that there was an agreement executed between the prosecution witnesses, who had given money to the applicant and some of the prosecution witnesses have filed a case against the applicant in a civil/money suit. For the above reason, there was no intention on the part of the applicant to cheat the said PWs, which was also stated by them in their deposition. There is every livelihood of the applicant to be acquitted of the aforesaid charges in Criminal Appeal No. 2/2023 which has been admitted. The learned counsel for the applicant further submits that the wife of the applicant is at present suffering from Brain Tumor and was operated at AIIMS, New Delhi sometime in the month of March, 2022. She needs to be constantly looked after and also needs follow-up check-up which could not be done due to the imprisonment of the applicant. Thus, the learned counsel has prayed that the Sentence Order dated 23.11.2022 in SR(PCA) No. 4/2018 may be suspended till the

disposal of the Criminal Appeal No. 2/2023 and that the applicant may be released on bail.

Ms. Mary L. Khiangte, learned Additional Public Prosecutor has strongly objected to the suspension of the Sentence Order dated 23.11.2022 in SR(PCA) No. 4/2018 and to the grant of bail to the applicant submitting that the PWs have clearly stated that they had given money to the applicant which is also not said to be denied by the applicant. It can also be clearly seen that the applicant had misused his official capacity while working as Managing Director, MAMCO by illegally collecting money from the prosecution witnesses and that the money so collected by him is not recorded since there is no official record about the receipt of the money in the office file which is clear from the deposition of PW No. 1.

The learned Additional Public Prosecutor also submits that there is enough evidence which indicates that the applicant had committed the offence under Sections 120B/468/471 of IPC and Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988. She further submits that the money involved in this case is a huge amount and it is clear that he had manipulated this amount along with Mr. Mustaqur Rahman, who is at present facing trial before the Prevention of Corruption Court. That such type of economic offences are serious offences and if the applicant is released on bail at this stage, it is sent a wrong message to the society at large and it would appear that such kind of economic offences can be easily condoned. In support of her submission, she has cited the case of *K.C. Sareen Vs. CBI, Chandigarh*, reported in (2001) 6SCC 584 (para 11 & 12), *State of Maharashtra Vs. Madhukar Wamanrao Smarth*, reported in (2008) 5SCC 721 (para 10 & 11) and *State of Maharashtra through Central Bureau of Investigation Vs. Mahesh G. Jain*, reported in (2013) 8SCC 119.

Having heard the submissions made by both the parties, this Court, on a brief appraisal of the evidence read out by the learned counsel in the Court, finds that there is no denial that a huge amount of money was given and accepted by the applicant. The circumstances under which the money is accepted is yet to be scrutinized in the Criminal Appeal No. 2/2023, which has been admitted. Thus, this Court finds that there appear no *prima facie* grounds to suspend the sentence order dated 23.11.2022 passed by the Special Judge, Mizoram, Aizawl in SR(PCA) No. 4/2018 arising out of ACB PS Case No. 6/2015 at this stage. It is also noted that from the medical certificates submitted with regards to the wife of the applicant, she was treated during 2022 and there is nothing that indicates that she is now in need of constant care or that she is facing much difficulty due to the operation which was done during 2022. It is also seen that LCR has been received and thus instead of suspending the Order dated 23.11.2022 passed by the Special Judge, Mizoram, Aizawl in SR(PCA) No. 4/2018 arising out of ACB PS Case No. 6/2015, it will be more appropriate if the Criminal Appeal No. 2/2023 is disposed of expeditiously. It is seen that paper book is yet to be prepared, which can be done expeditiously.

For the above reasons, I.A.(CrI.) No. 9/2023 is dismissed and disposed.

JUDGE

Comparing Assistant