

GAHC030000572023



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

Case No. : Bail Appln./4/2023

Sh. Suresh Meena
S/o Laxman
R/o Kailawas District - Dausa, Rajasthan
P/A Mizoram University, Tanhril.

VERSUS

The State of Mizoram
r/b the Public Prosecutor, Gauhati High Court, Aizawl Bench.

Advocate for the Petitioner : A H Borbhuiya

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

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

04.05.2023

Heard Mr. A.H. Barbhuiya, learned counsel for the petitioner and Ms. Mary L. Khiangte, learned Addl. Public Prosecutor for the State. No one appears for the respondent No. 2 despite notice.

2. It is seen that notice was issued to the respondent No. 2/complaint on 22.03.2023 by registered post with A/D due but neither unserved notice nor A/D card has returned back. Having regard to the provision of Order V Rule 9 (5) of the Code of

Civil Procedure, 1908, notice is deemed to be complete on respondent No. 2.

3. By filing this application under Section 439 of the CrPC, the petitioner prays for grant of bail. He was arrested on 28.02.2022 in connection with All Women Police Station Case No. 7/2022 registered under Sections 376(1)/511/354(A)/354(B) of the Indian Penal Code (IPC).

4. Mr. A.H.Barbhuiya, learned counsel for the petitioner submits that the allegation against the petitioner is that he attempted to rape the respondent No. 2, who is one of his colleague at Kendriya Vidyalaya Sangathan (KVS), Tanhril on 28.02.2022 at around 6.50 pm and for which, the aforesaid case was registered against him and the petitioner was arrested. He submits that the petitioner however did not commit rape upon the respondent No. 2 and on account of the delay in completion of the trial, the petitioner has been languishing in Jail ever since his arrest. He submits that the petitioner is a regular employee of the KVS at Tanhril and therefore, there is no chance of him absconding or jumping bail if released on bail. The learned counsel submits that the petitioner in view of being arrested and lodged in Jail could not participate in the Departmental Examination conducted by the KVS, Silchar in the month of February, 2023. The petitioner has applied for the Civil Service (Preliminary) Examination, 2023 in the month of February, 2023 and the exam is going to be conducted by the Union Public Service Commission (UPSC) on 28.05.2023. Similarly, the petitioner has also applied for the post of Assistant Provident Fund Commissioner/ Enforcement Officer/ Accounts Officer-2023, which is also due to be conducted by the UPSC on 2.7.2023. Both the applications of the petitioners have been accepted but if the petitioner is not released on bail, he will not be able to appear for the examination on the scheduled date. He therefore submits that the petitioner may be released on bail and the petitioner is ready to abide by any condition/conditions imposed by this Court for being released on bail.

5. Ms. Mary L. Khiangte, learned Addl. Public Prosecutor on the other hand submits

that the charges framed against the petitioner is for a serious offence i.e., rape or attempt to rape. She submits that only for the reason that the respondent No. 2 suffered from congenital Absent vagina, the petitioner could not succeed in committing the crime. However, even for his attempt, the petitioner is liable to be punished under the relevant sections of law under the IPC. She submits that trial against the petitioner is on and so far, 4 prosecution witnesses have been examined out of the 7 prosecution witnesses cited. She submits that from the evidence led so far, it clearly reveals that the petitioner is indeed guilty of the offence alleged to have been committed by him. She further submits that the Department Examination was scheduled to be conducted on 12 - 14 February, 2023 and the petitioner has only applied for bail before this Court on 10.02.2023, which only goes to show that the same is an afterthought. She further submits that besides the two posts mentioned by the petitioner, the petitioner has also applied for two other posts and he has selected the Examination Centre as Jaipur. Since the petitioner is a regular employee of KVS, located in the Mizoram University Campus at Tanhril, Aizawl, the petitioner could have very well chosen Aizawl as the Examination Centre. Therefore, in selecting Examination Centre as Jaipur, the petitioner is trying to use the same as a means for securing bail from this Court. Under the circumstance, the learned Addl. Public Prosecutor submits that the bail application of the petitioner should be rejected.

6. I have considered the submissions made by the rival parties and I have perused the materials available on record.

7. Pursuant to the filing of the chargesheet, charge has been framed against the petitioner and trial has commenced admittedly due to the fact that the petitioner has pleaded not guilty and claimed for trial. It is submitted at the bar that out of the 7 prosecution witnesses, as many as 4 prosecution witnesses have been examined leaving behind the examination of three prosecution witnesses. It is not known as to whether the petitioner will be having any witness in his defence once the examination

of the prosecution witnesses is completed. At any rate, it cannot be ascertained for sure as to when the trial proceedings will conclude. On the other hand, the petitioner has been lodged in Jail since his arrest on 28.02.2022. He is a Teacher in the KVS, which is situated within the Mizoram University Campus. As per the certificate issued by the Principal of the Institution, he is a regular employee and currently under probation. The petitioner besides being a teacher of the Institution aspires to compete in competitive examinations held for various posts by the UPSC. As stated, the petitioner is lodged in Jail pending trial and its conclusion for the last more than one year. This Court is not unmindful about the nature of the charges framed against the petitioner but at the same time, considering his age, absence of past criminal record and the desire to sit for competitive examinations, I am of the considered view that the petitioner pending conclusion of the trial should be enlarged on bail. In the additional affidavit filed by the petitioner on 03.05.2023, it is seen that he has applied for the Central Civil Service Preliminary Examination, 2023 scheduled to be held on 28.05.2023 and also for the post of Assistant Provident Fund Commissioner/ Enforcement Officer/ Accounts Officer scheduled to be held on 02.07.2023. It is needless to mention herein that upon conclusion of the trial, if he is acquitted by the learned Trial Court while his enlargement on bail to pursue the examinations is disallowed, injustice would be caused to him. On the other hand, if the trial concludes and he is convicted, he will then have to be taken back into the Custody to serve the sentence that will be imposed by the learned Trial Court.

8. In view of above, the petitioner is directed to be released on bail upon furnishing a bail bond of Rs. 50,000/- with one local surety of the like amount to the satisfaction of the District & Session Judge, Aizawl. Bail is granted to the petitioner with further condition that he shall make himself available as and when he is required to do so by the Trial Court. The petitioner shall not try to influence the witnesses directly or indirectly. He shall not tamper with the evidence.

9. The petitioner shall render himself liable for cancellation of the bail if any of the condition mentioned herein above is violated.

10. With the above observations and directions, the bail application stands disposed of.

JUDGE

Comparing Assistant