

GAHC030001772023



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

Case No. : AB/4/2023

Sh. S. Vabeily
Lomasu, Siaha District, Mizoram

VERSUS

State of Mizoram
Aizawl

Advocate for the Petitioner : Mr. Victor L Ralte

Advocate for the Respondent : Mrs. Linda L Fambawl, Addl. PP., Mizoram

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

28.04.2023

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Heard Mr. Victor L. Ralte, learned counsel for the petitioner as well as Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor for the State.

2. Mr. Victor L. Ralte, learned counsel for the petitioner submits that the petitioner apprehends arrest in connection with ACB PS Case No. 1/2023 under Section 13(1)(a) (b) and Section 13(2) of the Prevention of Corruption Act, 1988 read with Section 120B/406/409/420 IPC.

3. The petitioner's counsel submits that the petitioner has been corporating with the investigation and that there is no question of the petitioner absconding if given anticipatory bail. The petitioner is the President of the Lomasu Village Council and was given a contract for construction of a Urinal Shed at a cost of Rs. 1.5 lakh. The petitioner constructed the Shed as per the direction of Sh. K.L. Vana(L), MADC, by dividing the Urinal Shed into four parts, by using wooden planks. The petitioner's counsel submits that though the Urinal Shed was not constructed specifically as per the order, the same had been constructed as per the information received by the petitioner from Sh. K.L. Liana(L), MADC. The petitioner being 56 years of age and a permanent resident of Lomasu Village Council, the petitioner should be granted anticipatory bail.

4. The petitioner's counsel has also relied upon the Judgment of the Apex Court in the case of *Kamaljit Singh Vs. State of Punjab and Another* reported in (2005) 7 SCC 226 and the case of *Siddharth Vs. State of Uttar Pradesh and Another* reported in (2022) 1 SCC 676 in support of his submission that as one of the co-accused namely, Smt. Julie B.Ngokei@ B.Ngokia had been released on anticipatory bail vide Order dated 13.04.2023 in Anticipatory Bail Application No. 6/2023 by the Special Judge, Prevention of Corruption Act, Aizawl, the petitioner herein should also be granted anticipatory bail. He submits that Smt. Julie B. Ngokei@B.Ngokia was a Contractor for the construction of steps.

5. Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor submits that the Case Diary and the photographs of the work done by the petitioner for construction of the Urinal shows that the petitioner had made the urinal by using wooden planks and not by way of an RCC construction, as had been stipulated in the work order. The Urinal also had no roof. The petitioner having misappropriated money by not constructing the Urinal as per the specification made in the work order, the application should be rejected.

6. I have heard the learned counsels for the parties.

7. At the outset, it has to be noted that the facts of the case pertaining to the co-accused, who had been granted anticipatory bail i.e. Smt. Julie B. Ngokei, is different from the case in hand. Smt. Julie B. Ngokei@B. Ngokia was a Contractor with regard to construction of concrete steps, while the petitioner herein was the contractor who constructed the Urinal. The above clearly shows that the facts in this case and the facts in the case of Smt. Julie B. Ngokei are different.

8. On a perusal of the photographs of the Urinal which is submitted, it is clear that the same is not an RCC structure, as the same is made with some wooden planks. Further, the Urinal does not have any roof. As it is settled law that a Judgment/Order is only a decision for what it decides, the facts of the present case being different from the facts in Smt. Julie B. Ngokei's case, the decision of the Apex Court in *Kamaljit Singh Vs. State of Punjab and Another (Supra)* is not applicable to the facts of this case. The photographs of the Urinal clearly show that the cost of the same could not have been anywhere close to the estimated amount Rs. 1.5 lakh. The cost of the wooden planks etc. in the photograph show that the approximate cost of the urinal could not be more than Rs. 10,000/-. The same being a wooden structure instead of an RCC structure as per the detailed plan and estimate, it clearly shows that there are materials against the petitioner. As the petitioner had been given a completion certificate, even though the Contractor had constructed the Urinal in violation of the detailed plan and estimate, there appears to be some collusion with officials as the petitioner had been given the entire estimated amount. As the investigation is not complete and as there are materials against the petitioner, the Judgment of the Apex Court in *Siddharth Vs. State of Uttar Pradesh and Another(Supra)* would not be applicable to the facts of this case. Further, as the grant of Anticipatory Bail is a discretionary power and keeping in view the above reasons, this Court is not inclined to allow the anticipatory bail application.

9. The anticipatory bail application is rejected.
10. The interim order passed earlier stands vacated and the interim anticipatory bail stands cancelled.

JUDGE

Comparing Assistant