

GAHC030002092023



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

Case No. : Bail Appln./13/2023

Sh. Isak Pawla
Chamdur P, Lawngtlai, Mizoram

VERSUS

State of Mizoram and Anr.
Aizawl:Officer-in-Charge
Sialsuk Police Station
Sialsuk
Aizawl District
Mizora

Advocate for the Petitioner : Mr. Joseph Lalchhanhima Renthlei

Advocate for the Respondent : Ms. Mary Lalruatkimi Khiangte (Addl. PP, Mizoram)

B E F O R E
HON'BLE MR. JUSTICE NELSON SAILO

18.05.2023

Heard Mr. Joseph L Renthlei, learned counsel for the applicant who submits that the applicant by filing this application under Section 439 Cr.P.C prays for his enlargement on bail. He submits that the applicant was arrested on 05.02.2023 in connection with Sialsuk P.S Case No. 1/2023 under Section 25(1A)/25(1AA)/29 of the Arms Act, 1959 r/w Section 120 B of the Indian Penal Code, 1868.

[2.] The learned counsel submits that ever since he is arrested, the applicant is in custody. Although his statements have been recorded by the investigating authority, charge-sheet is not yet filed till date. Being in custody for the last 90 days, the applicant is entitled to be granted default bail in terms of Section 167(2)(a)(i) of the Cr.P.C.

[3.] The learned counsel submits that the petitioner's wife expired on 11.02.2023 while giving birth to their daughter named Isarel Vanlalthunhlengi. Since he is in custody, the applicant has not even seen the baby and he should be released to look after the new born baby. The learned counsel submits that the applicant is only an accused at this stage and therefore placing him under custody beyond 90 days amounts to being punished with imprisonment without any trial. It is also not known as to when the charge-sheet would be submitted and therefore, the applicant should be released on bail. The learned counsel submits that the applicant is a permanent resident of Chamdun P, Lawngtlai and that if released on bail, there is no question of absconding and that he will extend full cooperation to the investigation. The learned counsel thus submits that the applicant should be released on bail. In support of his submission, the learned counsel has relied upon the following authorities:-

(1) *Mathew Lalnunpuia vs. State of Assam*, (2011) 6 GLR 465.

(2) *S. Kasi vs. State Through Inspector of Police Samaynallur Police Station, Madurai District*, (2021) 12 SCC.

[4.] Mrs. Linda L Fambawl, learned Addl. Public Prosecutor, on the other hand, submits that the charges against the applicant are serious in nature as it involves violation of the Arms Act apart from the IPC. She submits that the statements of the four accused persons including the applicant have been recorded by the Investigating Authority and from the statements recorded, it can be seen that the instant applicant

is the main person who is behind the alleged crime. By referring to the Case Diary, the learned Addl. Public Prosecutor submits that the Call Detail Report (CDR) has been requisitioned from the Superintendent of Police, Aizawl District, Aizawl and that the same is still awaited till date. As such, the investigation not being complete, bail may not be granted to the applicant.

[5.] In terms of this Court's order dated 12.05.2023, the case I.O namely S.I Jessica Lalawmpuii is present in Court. She submits that the statements of accused persons have been recorded and to proceed further, the CDR is required which was requisitioned from the Superintendent of Police, Aizawl District, Aizawl on 16.02.2023 and therefore, the same is being awaited as on date. Unless the same is received, she is unable to proceed with the matter.

[6.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

[7.] The applicant was admittedly arrested on 05.02.2022 and the mandatory period of 90 days in terms of Section 167(2)(a)(i) of the Cr.P.C expired on 05.05.2023. It is also not in dispute that the charge-sheet has not yet been filed till date in view of the non-conclusion of the investigation. Therefore, having regard to the authority relied upon by the learned counsel for the applicant i.e. *S. Kasi (Supra)*, wherein the Apex Court by referring to the case of *Uday Mohanlal Acharya vs. State of Maharashtra*, reported in (2001) 5 SCC 453 had observed that on the expiry of the period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate. Likewise, a Co-ordinate Bench of this Court in the case of *Mathew Lalnunpuia (supra)* observed that in order to consider whether an accused should be released on bail, the Court has to consider whether after release of the

accused on bail, he or she would be available to face the trial or not. Further, whether there is any possibility of him or her absconding or tampering the witnesses on release is another factor. The applicant in the bail application has annexed a copy of the voter's ID Card which shows that he is a resident of Chamdur P in Lawngtlai District, Lawngtlai and also a certificate stating that his wife had expired while giving birth to their daughter which is certified by the President of the Village Council Court, LADC, Chamdur P. It is further seen that from the Arrest/Court Surrender form at paragraph No. 12, it is shown that the applicant has no previous conviction and is not dangerous and that he is not likely to escape if he released on bail.

[8.] Upon due consideration of the above facts and in view of the provision of Section 167 (2)(a)(i) Cr.P.C, I am of the considered view that the applicant should be released on bail.

[9.] In view of above, the applicant shall be released on bail on furnishing a bond of Rs. 50,000/- with two sureties of the like amount to the satisfaction of the Chief Judicial Magistrate, Aizawl. Bail is granted to the applicant with a further condition that he shall appear before the I.O once in a month or whenever he is asked to do so. The applicant shall also not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him or her from disclosing such facts to the Court or to any Police Officer. The applicant shall not leave the State of Mizoram, without obtaining prior permission from the Chief Judicial Magistrate, Aizawl.

[10.] With the above observation and direction, the Bail Application stands dispose of. The presence of the case I.O is also dispensed with.

JUDGE

Comparing Assistant