

GAHC030002222023



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

**Case No. : AB/6/2023**

Sh. C. Vanlalmawia  
Mission Veng, Aizawl, Mizoram

VERSUS

State of Mizoram  
Aizawl

**Advocate for the Petitioner** : Mr A.R. Malhotra

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

**ORDER**

Date : 29-05-2023

**BEFORE**  
**HONOURABLE MR. JUSTICE NELSON SAILO**

Mr. A.R. Malhotra, learned counsel for the petitioner and Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor appearing for the State respondent are present.

**2.** On 03.05.2023, Court passed the following order:-

*“Heard Mr. A.R. Malhotra, learned counsel for the petitioner who submits that the petitioner is filing this application under Section 38 CrPC prays for grant of Anticipatory Bail as the petitioner apprehends his arrest in connection with ACB Case No. 2/2022 dated 05.05.2022 under Sections*

409/468/471/420 IPC read with Section 13(1)(a)(b)/13(2) of the Prevention of Corruption Act, 1988.

*The learned counsel submits that the allegation against the petitioner is that he had misappropriate funds under the Centrally Sponsored Scheme and State Matching Share during the year 2013-2018 and a written complaint was lodged by the Mizo Zirlai Pawl Headquarters, Kolasib before the Superintendent of Police, ACB, Mizoram in the month of March, 2019 which ultimately resulted in registration of the ACB case referred to herein above.*

*The learned counsel submits that the petitioner has been cooperating with the investigation throughout and has not interfered with the investigation in any manner. Now that the Investigating Agency is in the verge of filing the chargesheet, the petitioner apprehends that he may be arrested.*

*The learned counsel submits that it is not the mandate of the law that prior to submission of the chargesheet, the person accused has to be arrested by the Police. In this connection, he relies upon the Apex Court decision rendered in Siddharth Vs. State of Uttar Pradesh & Another, reported in (2022) 1 SCC 676.*

*In view of above, issue notice to the respondent returnable by two weeks.*

*Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor accepts notice on behalf of the State.*

*Requisite extra copy of the application be furnished to her if not already done. Objection to the application if any may be filed on or before the next returnable date.*

*In the interim having regard to the projection made by the petitioner, it is hereby provided that in the event of the arrest of the petitioner, he shall be released on bail upon furnishing a bail bond of Rs. 50,000/- with one surety of the like amount to the satisfaction of the arresting authority.*

*The ad interim pre-arrest bail is granted to the petitioner with the further condition that he shall not in any manner interfere with the*

*investigation and shall cooperate with the Investigating Authority.*

*List the matter again on 18.05.2023."*

**3.** Today, the learned Addl. Public Prosecutor has produced the Case Diary. A perusal of the same shows that entry has been made only up till 12.04.2023. Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor submits that the case Investigating Officer has requisitioned an assessment from the Engineer-in-Chief, Public Works Department, Government of Mizoram on the probable expenditure incurred by Principal, Diet, Kolasib on 14.03.2023 and that the assessment is still awaited as on date. She submits that once the assessment is received, the official statement of the petitioner will be taken and thereafter, the Investigating Officer will be in a position to file the Charge-Sheet. She otherwise submits that the petitioner has been co-operating with the investigation.

**4.** Mr. A.R. Malhotra, learned counsel for the petitioner submits that prior to coming before this Court, the petitioner had approached the learned Trial Court with Anticipatory Bail Application No. 8/2023. Although the ad-interim pre arrest bail was granted to the petitioner vide Order dated 19.04.2023 but vide Order dated 28.04.2023, the same came to be rejected. Since the Investigating Officer is in the verge of filing the Charge-Sheet, the petitioner has reasonable apprehension of being arrested for alleged commission of non-bailable offence, as was registered vide ACB Case No. 2/2022 dated 05.05.2022. He therefore submits that Court may grant him Anticipatory Bail.

**5.** I have considered the submissions made by the learned counsels for rival parties and I have perused the materials available on record.

**6.** From the Case Diary, it is seen that the investigation is yet to complete, in view of the fact that according to the case Investigating Officer, an assessment has been requisitioned from the office of the Engineer-in-Chief, Public Works Department. It is also seen that the petitioner has been co-operating with the investigation. The petitioner, who was serving as a Principal, Diet, Kolasib superannuated in the month of March, 2023. The Apex Court in the case of *Siddharth (Supra)*, in the given facts of that case held that the occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation of the self-esteem of a person. If the investigating officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation, there should not be any compulsion on the part of the officer to arrest the accused.

**7.** Upon considering the submissions made and upon the perusal of the Case Diary and the authorities relied upon, the petitioner is granted pre arrest bail on the same terms and conditions as was imposed vide Order dated 03.05.2023, as abstracted herein above.

**8.** The application accordingly stands disposed of.

**JUDGE**

**Comparing Assistant**