

GAHC030002312023



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

Case No. : I.A.(Crl.)/29/2023

Sh. Rongura
Bawngkawn, Aizawl, Mizoram

VERSUS

State of Mizoram and Anr.
Aizawl: The Officer-in-Charge
Anti-Corruption Bureau
Govt. of Mizoram
Aizawl

Advocate for the Petitioner : Mr C Lalfakzuala

Advocate for the Respondent : Mrs. Linda L Fambawl

Linked Case : Crl.A./21/2023

Sh. Rongura
Bawngkawn
Aizawl
Mizoram

VERSUS

State of Mizoram
Aizawl

2: The Officer-in-Charge
Anti-Narcotics Squad
Aizawl
Mizoram
Aizawl

3:The Officer-in-Charge
Anti-Corruption Bureau
Govt. of Mizoram
Aizawl

Advocate for the Petitioner : Mr. C Lalfakzuala
Advocate for the Respondent : Mrs. Linda L Fambawl

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

Date : 30.05.2023

Heard Mr. C. Lalfakzuala, learned counsel for the applicant/appellant, who has filed this application under Section 389(1) Cr.P.C. for suspension of the sentence imposed upon the applicant/appellant by the learned Judge, Special Court, Prevention of Corruption Act, Aizawl in SR (PCA) No. 1/2020 vide Sentence Order dated 20.03.2023, wherein the applicant/appellant was sentenced under Section 420 r/w Section 120B IPC to undergo 5 years imprisonment with a fine of Rs. 60 lakhs, i.d. another imprisonment of 30 years, he was also sentenced under Section 477 A r/w 120B IPC to undergo 5 years imprisonment with a fine of Rs. 60 lakhs, i.d. another imprisonment of 30 years and sentenced under Section 13(2) r/w Section 13(1)(c) & (d) of PC Act, 1988 r/w Section 120B IPC to undergo 5 years imprisonment with a fine of Rs. 60 lakhs, i.d. imprisonment for a term of 30 years. The terms of imprisonment shall run concurrently except for the fine imposed.

The learned counsel for the applicant/appellant has prayed for the release of the applicant/appellant on bail pending disposal of the connected appeal, which is registered as Criminal Appeal No. 21/2023, mentioning that there are sufficient grounds in which the conviction against the applicant/appellant is likely to be set aside since the applicant/appellant was convicted mainly on the deposition of the two prosecution witnesses, who had deposed before the Court that they had prepared

excessive bills on the verbal direction of the instant applicant/appellant. That the applicant/appellant did not give such direction as alleged and the innocence of the applicant/appellant can be brought out during the consideration of the Criminal Appeal No. 21/2023. He further submits that the applicant/appellant is also having serious medical ailments since he has had an implantation of a pace maker and he had to take voluntary retirement due to his medical condition during the year, 2019. The medical certificates showing the medical condition of the applicant/appellant have been duly annexed along with the instant I.A.(Crl.) No. 29/2023. That the applicant/appellant is now a senior citizen aged 63 years of age. Being a permanent resident of Bawngkawn Brigade, there is no likelihood of him absconding during the pendency of the Crl.A. No. 21/2023. That since he has already left his service on voluntary retirement, there is no chance of him exerting any influence during the pendency of the Crl.A. No. 21/2023. Further, since there are as many as 46 prosecution witnesses which were examined by the learned Trial Court, the preparation of the paper book for the appeal is likely to take some time.

For the above reasons, he has prayed for the suspension of the sentence and the release of the applicant/appellant on bail during the pendency of the Crl.A. No. 21/2023. The learned counsel for the applicant/appellant has relied on the judgments of the Coordinate Bench in *Dr. N. Palai Vs. CBI (Imphal)* Case No. I.A.(Crl.) No. 32/2023 dated 29.05.2023, Linked Case Criminal Appeal No. 26/2023, *Liansanga Vs. State of Mizoram* Case No. I.A.(Crl.) No. 26/2022, Linked Case No. Crl.A. No. 28/2022 and the decision of the Apex Court in *Kali Ram Vs. State of Himachal Pradesh*, reported in *1973 2 SCC 808*, which is regarding the silence of the witnesses who were aware of the commission of an offence.

Mrs. Linda L. Fambawl, learned Additional Public Prosecutor, on the other hand has strongly objected, mentioning that the applicant/appellant has been convicted for

economic offences committed by him wherein the misappropriated amount is a huge amount of Rs. 1,73,48,365.00/- and that releasing him on bail at this stage would be sending a wrong message to the society at large. That the evidence adduced in the Trial Court clearly points out to the guilt of the applicant/appellant and the conviction order of the learned Trial Court is most likely to be upheld in the CrI.A. No. 21/2023.

Having heard the submissions made by the learned counsels for both the parties, this Court finds that the applicant/appellant is now aged 63 years and is genuinely suffering from a serious ailments, he had to take voluntary retirement due to his medical condition. It is also seen that LCR called for is not received till date by his Registry and paper book is yet to be prepared. Therefore, considerable time may be taken before the CrI.A. No. 21/2023 can be heard on merits by the Court.

In view of the above and also considering the fact that since the applicant/appellant is no longer in service, there is a bleak chance of him being able to exert any influence during the pendency of the CrI.A. No. 21/2023, this Court find it fit to suspend the sentence order of the learned Special Court dated 20.03.2023 and release the applicant/appellant on bail with a bail bond of Rs. 50,000/- and with two surety of the like amount, who shall be to the satisfaction of the Special Judge, PC Act, Aizawl, Mizoram.

I.A.(CrI.) No. 29/2023 accordingly stands allowed and disposed.

JUDGE

Comparing Assistant