

GAHC030003372023



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

Case No. : AB/7/2023

Sh. Buddha Lila Chakma and Anr.
Devasora, Lawngtlai

2: Smt. Sujata Chakam

VERSUS

State of Mizoram
Aizawl

Advocate for the Petitioner : Mr B Lalramenga

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

Linked Case : AB/8/2023

Sh. Kali Kumar Tongchangya
S/o Kegera Tongchangya
R/o H.No. 51
Bilosora
Lawngtlai District
Mizoram.

VERSUS

The State of Mizoram
Aizawl

Advocate for the Petitioner : Mr B Lalramenga
Advocate for the Respondent : P.P./Addl.PP
Mizoram

ORDER

B E F O R E

HON'BLE MR. JUSTICE NELSON SAILO

28.06.2023

Heard Mr. Roshan Subedi learned counsel for the petitioners who submits that by filing this application under Section 438 Cr.P.C, the petitioners pray for pre-arrest bail as they apprehend that they may be arrested in connection with ACB Case No. 2/2021 dated 14.04.2021 under Section 120(B)/409/420 IPC read with Section 13(1)(a)(b)/13(2) of the Prevention of Corruption Act, 1988. On 23.06.2023, Court passed the following order:-

“Heard Ms. Ruthi Vanlalhruii, learned counsel for the petitioners, who submits that by filing this petition under Section 438 Cr.PC, the petitioners pray for anticipatory bail since they apprehend their arrest in connection with ACB Case No. 2/2021 dated 14.04.2021 under Section 120B/409/420 IPC read with Section 13(1)(a)(b)/13(2) of the Prevention of Corruption Act, 1988.

The learned counsel submits that apprehending that they will be arrested as informed by the case I.O, they filed Anticipatory Bail No. 3/2023 before the learned Special Judge, PC Act, Aizawl but their application was rejected vide Order dated 23.03.2023.

She submits that the petitioner No. 1 contested for the election to the CADC in

the month of May, 2023 but was not successful in getting elected. She submits that now that the Investigating Agency has submitted Charge-sheet, the petitioners are directed to appear before the Special Court, PC Act, Aizawl on 23.06.2023 to face the trial. They have been informed by the case I.O verbally that they will be arrested since Charge-sheet has been filed. She therefore submits that the petitioners may be granted anticipatory bail.

In view of above, issue notice, returnable by 28.06.2023.

Learned Addl. Public Prosecutor, Ms. Mary L. Khiangte appears for the State and accepts notice.

*List the matter again on **28.06.2023.**"*

Today when the matter is listed, the learned counsel for the petitioners has drawn the attention of this Court to paragraph No. 6(vi) of the application and submits that since the charge-sheet has been filed, the petitioners have a reason to believe that they will be arrested. The learned counsel submits that although the case was fixed on 23.06.2023 before the Trial Court for delivery of documents but the petitioners could not appear before the Court because as there was bereavement in the family. The next Court date fixed is 18.07.2023. The learned counsel submits that unless some protection is granted to the petitioners they are likely to be arrested.

Ms. Mary L. Khiangte, learned Addl. Public Prosecutor submits that since the investigation is completed and the charge-sheet has been submitted by the investigating authority, it is now up to the Court whether or not to put the petitioners under judicial custody.

Section 438 of the Cr.P.C provides as follows:-

“438. Direction for grant of bail to person apprehending arrest.---

[(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:--

- (i) the nature and gravity of the accusation;*
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
- (iii) the possibility of the applicant to flee from justice; and*
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested."*

From a perusal of the above abstract, it may be seen that when a person has reason to believe that he may be arrested on the accusation of having committed a non-bailable offence, he may apply to the High Court or Court of Session for pre-arrest bail and the same may be granted by the Court upon considering the nature and gravity of the accusation, the antecedents of the applicant, past conviction, if any, possibility of the applicant flee from justice, etc.

In the present case, it may be seen that both the applicants are husband and wife and in fact, the petitioner No. 1 was the Member of the District Council of Chakma Autonomous District Council (CADC) during the earlier term, which is the 10th CADC. Only because charge-sheet has been filed and the matter has been fixed before the Trial Court for delivery of documents, it cannot be presumed by the petitioners that

there may be arrested. It may further be seen that the Anticipatory Bail sought for by the petitioners before the learned Special Judge, PC Act, Aizawl, vide Anticipatory Bail Application No. 3/2023 was rejected vide Order dated 23.03.2023 but however, the petitioners have not been arrested despite such rejection. Therefore, I do not find any substance in the apprehension projected by the petitioners that they will be arrested so as to grant them Anticipatory Bail. Accordingly, the petition stands rejected and disposed.

JUDGE

Comparing Assistant