

GAHC020003292023



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

Case No. : Bail Appln./13/2023

SHRI. PHUTOKA S. LABO
S/O SATOVI LABO, DIPHUPAR B VILLAGE, 5TH MILE,
DIMAPUR, NAGALAND

VERSUS

THE STATE OF NAGALAND
KOHIMA NAGALAND

Advocate for the Petitioner : ALEZO KIRE

Advocate for the Respondent : P.P, NAGALAND

**BEFORE
HON'BLE MRS. JUSTICE MARLI VANKUNG**

ORDER

Date : 10-08-2023

Heard Mr. Zakato Chishi, learned counsel for the petitioner alongwith Mr. V. Zhimomi, learned Public Prosecutor (P.P.), Nagaland, for the State respondents.

2. This is an application filed under Section 439 of the Code of Criminal Procedure, 1973 praying for enlargement of the alleged accused persons on bail in GR No. 314/2023 corresponding to Medziphema PS Case No. 0009/2023 under Sections 365/506/34 IPC.

3. Facts of the case which led to filing of the instant bail application

is that on 03.05.2023 the informant filed an FIR against Mr. Kihito Labo and accomplices stating that Mr. Kihito Labo and his accomplices constantly harassed and intimidated the employees of the Sushee Infra & Mining Ltd. which had been awarded Tunnel Construction Works by NF Railways for the Dhansiri-Zubza Railway project. It was also stated in the FIR that on 22.04.2023, Mr. Pathan Salman, Site Supervisor was abducted from the project site at 12:30 PM. After being blindfolded he was taken to an unknown location by Alto Car and held captive for about 6 (six) hours and was thereafter released at around 4th mile area, Dimapur. Prior to the arrest of the accused person, the accused was arrested in connection with another case in GR 86/2023 corresponding to Sechu (Z) PS Case No. 11/2023 under Sections 384/385/511/34 IPC. The accused was granted bail by the Judicial Magistrate, First Class, Kohima, vide Order dated 27.06.2023 in the said case. However, on an application filed by the Investigating Officer (IO) praying for shown arrest and grant of transit remand of the instant accused person for the purpose of investigation and interrogation in the instant PS Case No. 0009/2023, the present accused was further taken under police custody. Thereafter, the accused was remanded to police custody for 48 (forty-eight) hours after which he was sent to judicial custody on 30.06.2023 where the case IO mentioned that his presence in the police custody was no longer required. The application for release of the accused on bail was rejected by the learned Lower Court on 12.07.2023, and hence, the instant bail application.

4. Mr. Zakato Chishi, learned counsel for the petitioner submits that the instant accused is entitled to be released on bail on the grounds that the accused person is innocent of the charge made out against him under Sections 365/506/34 IPC. He points out that Section 506 IPC is a bailable offence and that he has approached this Court for grant of bail on the arrest of the accused under Section 365 IPC. The learned counsel mentions that the name of the instant accused person was not mentioned in the FIR, which shows that the accused is not connected with the case and is innocent of the charge made out against him. He

submits that since the accused has been sent to judicial custody the presence of the accused person is no longer required by the police after he was interrogated while in police custody. That the accused is only of 34 (thirty-four) years with no previous conviction made out against him. He further submits that the object of bail being to secure the presence of the accused at the time of the trial, there is nothing to show that the accused is likely to jump bail and that the applicant who is a relative of the accused is a Government employee and a responsible citizen who will ensure that the accused is present whenever required before the Court or the case IO. He submits that the accused is also a permanent resident of Ikeshe Village alongwith the applicant and there is no fear of him absconding if released on bail. The learned counsel further submits that if the accused is released on bail he will fully co-operate with the investigation of the case and will not interfere with the investigation of the case in any way. That the applicant is ready to provide any amount of surety or bail amount imposed by the Court and abide to any terms and conditions made by the Court. He further submits that the accused has been charged under Section 365 IPC where the sentence is only up to 7 (seven) years and is not a heinous crime where the sentence is imprisonment for life or death. That since the accused is innocent of the charge the period where he is under judicial custody cannot be recovered and there is a violation of liberty of the accused person being innocent of committing any offence. In support of his submissions, the learned counsel has relied on the judgments of the Apex Court in:-

- (i) ***Sanjay Chandra vs. Central Bureau of Investigation***, reported in **(2012) 1 SCC 40** at para 30 and 38
- (ii) ***Dataram Singh vs. State of UP and another***, reported in **(2018) 3 SCC 22** at para 3 & 4, and
- (iii) ***Arnesh Kumar vs. State of Bihar and another***, reported in **(2014) 8 SCC 273** at para 7.1 and 7.2.

5. Mr. V. Zhimomi, learned P.P., on the other hand, submits that the Case Diary shows that the accused was arrested and on praying for movement order had recorded the statement of the accused person at

the police Station. That during the investigation the other suspected persons could not be traced out and the accused person did not give proper address and particulars of other accused persons. That the other accused persons could not be apprehended as no clue was ascertained from the villagers/locality people. He, thus, submits that the investigation is still ongoing and the accused persons even though the name is not in the FIR appears to be involved in the case since it is clear that more than one person was involved in the case.

6. Having heard the submissions made by both the parties this Court finds that the name of the accused does not appear in the FIR filed on 03.05.2023. It is also seen that the accused was under police custody for 48 (forty-eight) hours wherein the Case Diary shows that he was interrogated and his statement taken. The charge against the accused is under Sections 506/365/34 IPC and Section 506 is a bailable offence. The sentence under Section 365 IPC is up to imprisonment of 7 (seven) years and no previous conviction against the instant accused person has been shown or proved. The Apex Court, in the case of **Sanjay Chandra** (supra) held as follows:-

"30. *In Gurcharan Singh v. State (Delhi Admn.) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179] this Court took the view: (SCC pp. 127-28, paras 22 & 24)*

"22. In other non-bailable cases the court will exercise its judicial discretion in favour of granting bail subject to sub-section (3) of Section 437 CrPC if it deems necessary to act under it. Unless exceptional circumstances are brought to the notice of the Court which may defeat proper investigation and a fair trial, the Court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life. It is also clear that when an accused is brought before the Court of a Magistrate with the allegation against him of an offence punishable with death or imprisonment for life, he has ordinarily no option in the matter but to refuse bail subject, however, to the first proviso to Section 437(1) CrPC and in a case where the Magistrate entertains a reasonable belief on the materials that the accused has not been guilty of such an offence. This will, however, be an extraordinary occasion since there will be some materials at the stage of initial arrest, for the accusation or for strong suspicion of commission by the person of such an offence.

38. *In State of U.P. v. Amarmani Tripathi [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] this Court held as under: (SCC pp. 31 & 32, paras 18 & 22)*

"18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see Prahlad Singh Bhati v. NCT, Delhi [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] and Gurcharan Singh v. State (Delhi Admn.) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179]]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused."

7. This Court finds that the State respondents have not made out any grounds as to why there is an apprehension that the accused would abscond or tamper or cause undue influence during the investigation of the case. For the above reasons and wherein the accused has not been charged of committing any heinous offence, this Court finds it fit to allow bail to the accused, Mr. Avika Assumi, arrested in connection with in GR No. 314/2023 corresponding to Medziphema PS Case No. 0009/2023 under Sections 365/506/34 IPC with bail bond of Rs. 40,000/- (Rupees Forty Thousand) and one liable surety of the like amount who shall be to the satisfaction of the learned Judicial Magistrate, First Class, Dimapur.

8. The accused shall also not:-

- (i) commit any offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and
- (ii) that such person shall 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 from disclosing such facts to the Court or to any police officer or tamper with the evidence, while on bail.

9. Accordingly, BA/13/2023 stands allowed and disposed.

Sd/-
JUDGE

Comparing Assistant