

GAHC020005672023



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

Case No. : Bail Appln./22/2023

SHRI CHUJANGMONGBA,
S/O SHRI TATONGNIKEN,
YIMLANG SECTOR, CHUNGTIA VILLAGE,
PO/PS MOKOKCHUNG P.S II,
DISTRICT MOKOKCHUNG, NAGALAND

VERSUS

THE STATE OF NAGALAND
NAGALAND

Advocate for the Petitioner : A. SOPHIE

Advocate for the Respondent : S. MERE, P.P, NAGALAND

Linked Case : I.A.(CrI.)/21/2023

SHRI CHUJANGMONGBA
S/O SHRI TATONGNIKEN

R/O YIMLANG SECTOR
CHUNGTIA VILLAGE

PO/PS MOKOKCHUNG
P.S II
DISTRICT MOKOKCHUNG
NAGALAND

VERSUS

THE STATE OF NAGALAND
NAGALAND

Advocate for : A. SOPHIE
Advocate for : S. MERE, P.P NAGALAND appearing for THE STATE OF
NAGALAND

**BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG**

ORDER

31.10.2023

Heard Mr. A. Sophie, learned counsel for the applicant as well as Ms. S. Mere, learned Public Prosecutor, Nagaland.

2. The petitioner filed this bail application under Section 439 of the Code of Criminal Procedure, 1973 praying for release of the accused person (name withheld) who was arrested on 28/2/2023 and detained behind the bar in connection with GR Case No. 34/2023 corresponding to Mokokchung Police Station-II Case No. 13/2023 under Section 120B/341/365/302 of the Indian Penal Code. The petitioner prays for release of the accused person amongst other on the following grounds:

a) *That prior to his arrest, the accused person never had any medical complication nor any health issue. However, some time in the month of July 2023 while inside the jail custody the accused started developing some health complication like; feverish with rash like development in his face due to which he was taken to hospital*

for checkup. And on 25.07.2023, after his medical examination, the alleged accused was diagnosed as positive for HIV-I antibodies, and that under the circumstances, there is every apprehension that the accused had contracted the HIV/AIDS virus under judicial custody as he had never had the virus prior to his arrest.

b) That the accused is currently undergoing ART treatment from the District Hospital of Mokokchung, however, the ART treatment regime alone does not suffice as getting proper treatment and care envisaged under the Treatment Guidelines and Protocols issued by the National AIDS Control Organization (NACO) and that every person with positive status must get the prescribed treatment protocols under the operational guidelines issued by the NACO, which includes availability of diagnostic facilities, counselling for the PL HIV, proper and healthy nutritional diet, hygienic surroundings, routine and proper checkup, etc as per their treatment.

c) Besides, the petitioner has also taken the following additional ground for the release of the accused: that there is no prima facie case against the accused person; that there is no direct or concrete evidence against the accused person and that the charge-sheet has been filed by the Investigating Officer of the case merely basing on the statement of the accused persons before the Police.

3. It may be mentioned here that by an order dated 19.10.2023, this Court had asked for a detailed report from the Superintendent, District Jail, Mokokchung through the learned Public Prosecutor as to what treatment is being provided to the present accused person, and as to whether the required medical treatment are being

provided to the present accused in the Mokokchung District Jail. And in compliance of the above information sought for, the Dy. Superintendent of Jail, District Jail Mokokchung had submitted a Medical Report in respect of the accused wherein it is stated that the accused who was tested HIV reactive on 25.07.2023 is presently under medication from Anti-Retroviral Therapy (ART) since 16/08/2023 from District Hospital, Mokokchung. The report also contained a certificate issued by the Pharmacist, District Jail Mokokchung which is reproduced as under:

“TO WHOM IT MAY CONCERN

Accused who is currently lodged at District Jail, Mokokchung in connection with GR-34/2023, U/S- 120 B/341/365/302 IPC, C/No. 0013/23, is tested HIV Reactive through Standard – Q Kit on 25-07-2023. For further confirmation his blood serum was sent to laboratory and confirm HIV positive and now he is under medication from ART, District Hospital Mokokchung w.e.f. 16/08/2023 without any complain since last 2 (two) months.

*Sd/-
District Jail, Mokokchung
Pharmacist
District Jail, Mokokchung”*

4. On the other hand the learned Public Prosecutor submits that in the instant case, the accused person along with the other co-accused persons had conspired and with an evil intention made a detailed plan to commit the alleged offence due to their political rivalry; and the plan was well executed by all the accused persons on 21.02.2023. And as disclosed by the accused persons

themselves, at the time of executing the crime, all the accused persons had their face covered with masks/scarfs and monkey caps to conceal their identity. She further submits that during the investigation, the CDR analysis reveals that both the victims and all the arrested accused persons along with the present accused person were at the scene of crime as indicated by tower locations on incident day on 21.02.2023. The said analysis proves the confessions made by the accused persons before the SIT team about their frequent mobile contacts among the accused persons prior to the commission of the crime, during the commission of the crime and after the commission of the crime. The independent witnesses too corroborates with the CDR analysis report. And after thorough investigation, the Investigating Officer found sufficient material against all the accused persons including the present accused person for their involvement in the commission of the alleged offence and hence, submitted charge-sheet against them. Thus, the learned Public Prosecutor submits that there is clear evidence that all the accused persons including the present accused person are involved in the crime; and hence, prays for dismissal of the present bail application.

5. The learned Public prosecutor further submits that during the pendency of this bail application, on 13.10.2023, the learned Sessions Court also found sufficient material against all the accused persons including the present accused person for their involvement in the case and hence, after hearing both the parties, had framed a charge against all the accused persons including the present accused person for commission of offence under Section

120B/341/325/302 IPC.

6. She further submits that as all the modern facilities are available in the District Jail, Mokokchung and presently the accused is under the Anti Retroviral Therapy (ART) from District Hospital, Mokokchung along with other HIV+ inmates in the District Jail, Mokokchung by maintaining the proper protocol as per the relevant guidelines for treatment of the HIV positive, the present accused person need not be given any special treatment for the same in as much as, the case of the accused person is not the separate and single isolated case in the District Jail, Mokokchung.

7. Heard both the learned counsels for the parties. I have also carefully perused the scanned copy of the case records.

8. Upon hearing the parties and on perusal of the records, and considering the alleged role played by the accused person along with the other co-accused persons and the material found against him on record, and also considering the nature and gravity of the offences alleged against him and the seriousness and impact of the case in the peaceful society, I am not inclined to interfere with the trial of the case by allowing this bail application at this stage. Accordingly, this bail application for release of the accused person is rejected.

9. However, the jail authority shall provide all necessary treatment to the accused person as required for treatment of such HIV positive patient by maintaining proper protocol as per the relevant guidelines.

- 9.** With the above, this bail application stands disposed of.

Sd/-
JUDGE

Comparing Assistant