

GAHC030000082024



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

Case No. : Bail Appln./2/2024

Sh. Lalmalsawma Ralte
S/o R. Zarzosanga
R/o Durtlang Leitan, Aizawl

VERSUS

The State of Mizoram and Anr.
Aizawl

Advocate for the Petitioner : Mr A.R. Malhotra

Advocate for the Respondent : Addl. AG/GA, Mizoram

B E F O R E

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

25.01.2024

Heard Mr. C. Tlanthianghlina, learned counsel for the petitioner. Also heard Mrs. Mary L. Kiangte, learned Addl. Public Prosecutor for the State.

2. This bail application has been filed in connection with Aizawl PS All Women Case No. 5/2024 arising out of FIR No. 5/2024 under Section 376(2)(n) of IPC.

3. The petitioner's counsel submits that the informant, who is a major, had been

working in the restaurant of the mother of the petitioner since 17.11.2023. However, the informant/victim left the restaurant on 14.01.2024. On an SMS alert being given in the Mobile phone of the petitioner's mother that Rs. 10,000/- had been withdrawn from the SBI Account of the mother of the petitioner from the Vaivakawn ATM, the petitioner submitted an FIR dated 16.01.2024 at the Bawngkawn Police Station, stating that the informant/victim had stolen her mother's ATM card and had taken Rs. 10,000/- from the Vaivakawn ATM at around 10.30 am.

4. The petitioner's counsel submits that acting upon the FIR submitted by the petitioner on 16.01.2024, the informant/victim Lucy Vanlalruatdiki was arrested by the Police. The petitioner's counsel submits that the petitioner had made a wrong statement in the FIR dated 16.01.2024, inasmuch as the SMS alert have been given in the Mobile of the mother of the petitioner and not on the petitioner's mobile. He also submits that the petitioner's Debit card has not been recovered till date.

5. The petitioner's counsel submits that the informant thereafter filed a counter affidavit one day later i.e. on 17.01.2024, stating that the petitioner had raped her on 18.11.2023 and on many other occasions in the month of November, 2023. Thus, due to the FIR submitted by the informant, the petitioner was arrested on 17.01.2024 and he is still in judicial custody till date. He submits that the FIR dated 17.01.2024 is only in reaction to the FIR dated 16.01.2024 and no rape was committed by the petitioner. He also submits that the informant had subsequently written a letter dated 17.01.2024 stating that she wanted to withdraw the allegation made by her against the petitioner. He submits that the petitioner preferred Bail Application No. 42/2024 before the Court of the District & Sessions Judge, Aizawl, which was rejected vide Order dated 23.01.2024.

6. The petitioner's counsel submits that the petitioner is to appear in the Mizoram Agriculture Service (MAS) exam to be held on 31.01.2024 and 01.02.2024. He submits

that in view of the petitioner being innocent and due to the fact that there has been considerable delay in filing the false FIR, the petitioner should be released on bail.

7. Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor admits that there is considerable delay in filing of the FIR as the allegation of rape had allegedly taken place on 18.11.2023 and in November, 2023. She submits that she does not have any objection if bail is granted at this stage.

8. I have heard the learned counsels for the parties.

9. On perusing the bail petition and the grounds taken therein, it is clear that the petitioner had submitted an FIR against the informant on 16.01.2024 alleging that the informant had stolen Rs. 10,000/- from the Account of the petitioner's mother through a stolen Debit Card. The informant has however submitted an FIR alleging rape only on 17.01.2024 i.e one day later after being arrested by the Police, pursuant to the FIR dated 16.01.2024.

10. The appellant is apparently a major and the delay in filing the FIR after two months of the incident cast a suspicious cloud as to the veracity of the FIR submitted by the informant. It appears that the subsequent FIR dated 17.01.2024 is only made to counter the earlier FIR dated 16.01.2024. A perusal of the FIR dated 17.01.2024 shows that the informant has alleged rape on 18.11.2023 and on many other occasions in November, 2023. Despite the above, the informant did not file any FIR in the month of November and December, 2023.

11. In the case of ***Harilal Etc. Vs. State of Madhya Pradesh, Criminal Appeal No. 2216-2217 of 2011, AIR 2023 SC 4239***, the Supreme Court has held that when there is no explanation for the delay in filing the FIR, it gives opportunity for deliberation and guesswork, as there is a possibility of embellishments in the

prosecution story.

12. On considering all the above facts, this Court is of the view that the petitioner should be granted bail. Accordingly, bail is granted to the petitioner on a bail bond of Rs. 20,000/- (Rupees Twenty thousand) only, with one surety of the like amount to the satisfaction of the learned CJM, Aizawl.

The bail petition is accordingly allowed and disposed of.

JUDGE

Comparing Assistant