

GAHC030003162024



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

Case No. : Bail Appln./52/2024

Zorinsanga
Zamuang, Mamit District, Mizoram

VERSUS

State of Mizoram and Anr.
Aizawl2:Sh. V.L. Malsawmdawnglian

Advocate for the Petitioner : Mr. David Malsawmkima

Advocate for the Respondent : P.P./Addl.PP, Mizoram

B E F O R E
HON'BLE MRS. JUSTICE MARLI VANKUNG
O R D E R

02.07.2024

Heard Ms. Vanlalhriati, learned counsel for the applicant along with Mrs. Linda L. Fambawl, learned Public Prosecutor for the State respondent and Mr. H. Zodingsanga, learned Legal Aid Counsel representing respondent No.2.

The instant application filed under Section 439 Cr.P.C is for release of the petitioner/accused on bail.

It is submitted by the learned counsel for the applicant that the petitioner

was arrested on 09.02.2024 for the alleged rape of one minor girl in the outskirts of Zamuang village.

The learned counsel for the petitioner has now prayed for the release of the petitioner on bail on the grounds that the petitioner is suffering from mental disability and she has enclosed a medical report issued by the Civil Hospital, Kulikawn, wherein, on examination of the instant petitioner, it was observed that the instant petitioner was having a mental age (MA) shown as 11.2 years. The learned counsel for the petitioner further submits that the instant petitioner is also suffering from Seizure Disorder Syndrome and had the said seizure attacks 4 times while he was in judicial custody. That the petitioner is suffering and having a lot of problems while in judicial custody and that the Jail inmates are also finding it difficult to handle him and his seizures.

The learned counsel therefore prays that the instant petitioner may be released on bail till the disposal of the instant case Criminal Trl. No.542/2024 arising out of Kanhmun PS No.7 of 2024 under Section 6 POCSO Act read with Section 376AB IPC.

Mrs. Linda L. Fambawl, learned Public Prosecutor on the other hand has strongly objected to the release of the petitioner on bail, submitting that the instant petitioner is charged under section 6 of POCSO which is a serious offence and there is a danger of the petitioner committing the same offence while he is released on bail.

Mr. H. Zodinanga, learned Legal Aid Counsel for respondent No.2 submits that the petitioner was well aware of the offence which he committed, since he has taken a child from Police Check Gate to the P.O, which is quite a distance away and therefore this shows that he had every intention to commit the said

offence against the victim.

The learned legal aid counsel further submits that if the petitioner is released on bail there should be an assurance that he will not commit any offence on similar nature while he is on bail, since he was informed by respondent No.2 that this may not be the first time that he had committed an offence of this nature.

I have heard the submissions made by the learned counsel for both the parties and also perused the documents on record.

It is seen that the main ground submitted for release of the petitioner on bail is due to his medical condition. On perusal of the medical documents submitted it is seen that a Discharged Card issued by the Civil Hospital, Kulikawn is enclosed wherein it appears that the petitioner was admitted on 07.03.2024 and discharged on 23.03.2024, the petitioner was arrested on 09.02.2024 and thus it is seen that he was admitted to Civil Hospital, Kulikawn while he was in judicial custody.

A perusal of the report of the medical certificate shows that the instant petitioner is reflected to have a mental age of 11.2 years while his age is recorded as being 21 years. He is diagnosed as having Seizure Disorder Syndrome, there is also a letter issued by the Medical & Health Officer, District Jail, Aizawl which also reports that the petitioner is suffering from Seizure Disorder and found to be having mental age of 11.2 years. It is also reported that the petitioner had suffered from seizure disorder while he was in custody on 4 (four) occasions.

In view of the above, this court considering the medical condition of the petitioner, find it fit at this stage, to allow the release of the petitioner on bail

with a bail bond of Rs.50,000/- (*Rupees fifty thousand*) only and with 2 (two) reliable sureties of the like amount. The petitioner is also granted bail under the condition that the petitioner while on bail, will not commit any similar offence and any report of his involvement, or on being accused of committing such similar offences, would result in the cancellation of the instant bail.

In view of the above, the instant Bail Application No.52/2024 stands allowed and disposed of.

JUDGE

Comparing Assistant