



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

Case No. : Bail Appln./3/2024

CHEPDAKMAYANG AND 2 ORS
S/O LANUMEREN
R/O H.NO. 141, YIMKUM SECTOR
CHUNGTIA VILLAGE.
P.S. II/ P.O. MOKOKCHUNG

REPRESENTED BY RONGENSASHI
S/O KATANG
R/O H.NO. 46, CHUNGTIA VILLAGE
P.S/P.O.- MOKOKCHUNG NAGALAND
2: LIPOKTEMSU
S/O RONGENSASHI
R/O YIMKUM SECTOR
CHUNTIA VILLAGE
MOKOKCHUNG

REPRESENTED BY RONGENSASHI
S/O KATANG
R/O H.NO. 46
CHUNGTIA VILLAGE
P.S/P.O.- MOKOKCHUNG NAGALAND

3: TEMSUAKUM
S/O IMDONGCHANG
R/O LONGTSUKTEP SECTOR
CHUNGTIA VILLAGE MOKOKCHUNG

REPRESENTED BY RONGENSASHI
S/O KATANG
R/O H.NO. 46
CHUNGTIA VILLAGE
P.S/P.O.- MOKOKCHUNG NAGALAN

VERSUS

THE STATE OF NAGALAND
KOHIMA NAGALAND

Advocate for the Petitioner : ANGSHUMAN SARMA

Advocate for the Respondent : P.P, NAGALAND

BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 08-05-2024

Heard Mr. A. Sarma, learned counsel for the applicants. Also heard Ms. S. Mere, learned PP for the State of Nagaland.

2. The instant bail application under section 439 CrPC has been filed by the three accused persons praying for their release in connection with GR case no. 34/2023 arising out of Mokokchung PS-II case no. 13/2023 under section 120(b)/341/365/302 IPC of the Indian Penal Code.

3. It is submitted that the earlier bail applications filed by the accused applicants before this Court were rejected. This is the 3rd subsequent bail application seeking for release in respect of the accused/applicant No. 1, Shri. Chepdakmayang and 2nd subsequent bail application for accused/applicants No. 2, Shri. Lipoktemsusu and accused/applicant No. 3, Shri. Temsuakum.

4. The ground taken by the accused applicants for their release in this bail application is that the trial proceeding of the above GR case no. 34/2023 has been stayed in the Transfer Petition (Suo

Moto) No. 04/2023 which deals with transfer of the said case from the Court of Sessions Judge, Mokokchung to Dimapur Sessions Judge. The stay of the proceeding has been first ordered on 02.11.2023 and the same has been extended till the next date of listing i.e., 05.04.2023. It is further submitted that there is an uncertainty to the disposal of the said Transfer Petition due to which the personal liberty granted to the applicants under Article 21 of the Indian Constitution has been invaded as the applicants have been languishing in custody for about 14 months, the applicant Nos. 1, 2 and 3 being arrested on 02.03.2023, 05.03.2023 and 06.03.2023 respectively. The learned counsel for the petitioners further submits that all the applicants are not involved in actual incident of commission of the alleged offence u/s 302 IPC. He further submits that the applicants are ready to abide by all conditions imposed upon them if the bail is granted to them.

5. In support of his submissions, the learned counsel has cited the judgment of the Hon'ble Supreme Court in the case of ***State of Kerela Vs Raneef*** reported in ***(2011) 1 SCC 784***. The relevant paragraph of the said judgment is reproduced herein below:

"15. In deciding bail applications an important factor which should certainly be taken into consideration by the Court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the respondent has already spent 66 days in custody (as stated in paragraph 2 of his counter affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dicken's novel 'A Tale of Two Cities', who forgot his profession and even his name in the

Bastille."

6. The learned counsel for the applicants further relied upon the judgment of the Hon'ble Supreme Court in the case of ***Sanjay Chandra vs Central Bureau of Investigation*** reported in ***(2012) 1 SCC 40***. The relevant paragraph of the said judgment is reproduced herein below:

"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty."

7. Ms. S. Mere, learned PP on the other hand submits that the earlier two bail applications in respect of applicant no 1 and one bail application in respect of applicants nos. 2 and 3 have been rejected after consideration on merit and since then, there is no any change of circumstance and status of the case for consideration of the bail for release of the accused applicants. The applicants have also not taken any new ground for their release except that there is a stay of proceeding of the case in the Transfer Petition (Suo Moto) No. 04/2023 which is pending before the Division Bench of this Hon'ble Court; and that, they have been under the custody for about 14 months. She further submits that while rejecting the earlier bail application No. 30/2023 filed by the applicant no. 1 and others, this Court vide order dated 15.12.2023 has already opined that merely staying the Trial proceeding would not constitute the change of circumstances for grant of bail to the accused persons as sought for.

8. The learned PP further submits that since the earlier bail application filed by the applicants have been rejected, on perusal of the case records and upon hearing the parties, and it was rejected on merit, she vehemently objected the grant of bail to the applicants on the same ground and prays for rejection of the instant bail application. She also submits that since there is no change in circumstances of the case and as the entire case records as well as the various order(s) passed by this Hon'ble Court in bail applications filed by the petitioners are available being annexed by the petitioner in the instant bail application, the records of the case is also not required to be called for.

9. Heard both the learned counsel for the applicants as well as the learned PP for the State. I have also perused the documents available on records.

10. The records shows that the learned Sessions Court on being found prima facie case against the accused persons has framed charges against the accused persons for offences under section 120(b)/341/365/302 IPC, and during the pendency for trial, the proceeding was stayed in Transfer Petition (Suo Moto) No. 04/2023 .

11. In view of the above fact and circumstances of the case, and considering the nature and gravity of the offences alleged and charged against the accused persons and also taking into consideration that the earlier bail applications were rejected and also that the applicants have failed to show any fresh ground for release of the accused persons/applicants, this Court finds no reason for consideration of the bail application for release of the

applicants at this stage.

Accordingly, the bail application stands rejected.

Sd/-
JUDGE

Comparing Assistant