

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE
AIZAWL JUDICIAL DISTRICT : AIZAWL**

Anticipatory Bail Appln. No. 5/2014

Ref :- Champhai PS Case No.39/2014 dt.19.3.2014 u/s 5(a) ES Act

Sh.Zothanmawia
R/o Chaltlang Dawrkawn, Aizawl Applicant

Versus

State of Mizoram Respondent

AND

Anticipatory Bail Appln. No. 6/2014

Ref :- Champhai PS Case No.39/2014 dt.19.3.2014 u/s 5(a) ES Act

Sh.Dasrat Lal Kanu S/o Nares G
R/o Venghlui, Aizawl Accused/Applicant

Versus

State of Mizoram Respondent

Date of hearing 15.4.2014

Date of Order 16.4.2014

APPEARANCE

For the Applicants	Mr. Lalhmingmawia, Advocate
For the Respondent	Mrs. Rose Mary, Addl. PP
		Ms. Rosy Lalnuntluangi, APP

ORDER

1. By this common Order the abovementioned two anticipatory bail applications are being disposed off.

2. Heard the Ld. Counsels.

3. Mr. R. Lalhmingmawia, Ld. Counsel for the applicants submitted that applicant Zothanmawia is a registered Explosives Dealer under the Govt. of

Mizoram under registration number E/HQ/MZ/21/2/(E51556) which expired on 31.3.2014 and process is on for renewal. The second applicant Dasrat Lal Kanu is working under the other applicant as Manager. According to the Ld. Counsel, the statement of Lalrinzuala driver of maxi cab is not reliable and that applicant Zothanmawia have been interrogated in the Champhai Police Station for 4 days. Test identification was also done but Lalrinzuala could not identify any of them as the person from whom they bought/loaded the seized items. The Ld. Counsel further submitted that applicant Dasrat Lal Kanu was not in Mizoram on the alleged date of purchase i.e 19.3.2014 and that during the relevant time he was in his hometown on family matters. The Ld. Counsel argued that the applicants are not the only persons dealing in explosive substances and it appears that they have been mistaken by the arrested persons. The Ld. Counsel argued that applicant Zothanmawia is a prominent and permanent resident of Aizawl at Chaltlang and applicant Dasrat Lal Kanu is married to a Mizo woman and as such, there is no danger of them fleeing from justice. The Ld. Counsel also submitted that the applicants have no criminal antecedents and that they are willing to fully cooperate with the investigation.

4. On the other hand, Mrs. Rose Mary, the Ld. Addl. PP submitted that from the investigation conducted so far, it appears that the seized explosive items were purchased by the main accused Lalthanglura from applicant Dasrat Lal Kanu who was referred as Das-a. The said person is said to be working under the applicant Zothanmawia and from the record, it appears that he was not amongst the employees of Zothanmawia who were paraded before the maxi cab driver Lalrinzuala. Therefore, the Ld. Counsel submitted that from the investigation done so far it appears that applicant Dasrat Lal Kanu has some involvement. The Ld. Addl.PP in her usual fairness submitted that from the record and investigation done so far there is no material to link the applicant Zothanmawia with the offence though he being an employer of Dasrat Lal Kanu may perhaps have some connection.

5. Heard the Ld. Counsels and carefully perused the Case Diary. From the record, it appears that applicant Zothanmawia has appeared before the Investigating Officer on 22.3.2014 alongwith the documents on the daily transactions of explosives. At the request of the Investigating officer, the

said applicant had also produced his employees on 23.3.2014 excluding the applicant Dasrat Lal Kanu who according to Zothanmawia was away at Guwahati “*to rectify some online errors they committed on feeding their transaction*”.

On 23.3.2014, Lalrinzuala was unable to identify any of them. Thereafter, there is no material from the case diary indicating the requirement of the presence of applicants for the purpose of investigation or directing either of them to produce any instrument/peripherals/documents that may be necessary in connection with investigation of the case. The case diary was last closed on 31.3.2014 for arrest of the employee/owner of M/s Zothanmawia Explosives and since then no further investigation has been conducted. Till date, the applicants have not been arrested. The present applications were filed on 24.3.2014.

6. It may be borne in mind that there are clear distinctions between anticipatory bail and regular bail. The former is granted in anticipation of arrest and therefore takes effect at the very moment of arrest, whereas the latter is obtained after arrest. In other words, pre-arrest bail/anticipatory bail does not bar the investigating agency from arresting the accused. The effect is that once pre-arrest bail is granted, in the event of arrest, the accused will be released on bail. The honb’le Apex Court in the case of DK Ganesh Babu versus PT Monokaran reported in 2007 Cr.LJ 1827 has held that *The object which is sought to be achieved by section 438 of the Code is that the moment a person is arrested, if he has already obtained an order from the Court of Session or High Court, he shall be released immediately on bail without being sent to jail.* Anticipatory bail to some extent intrudes in the sphere of investigation of crime and the Court must be cautious and circumspect in exercising such power of discretionary nature.

A perusal of the case diary clearly revealed that investigation is in progress. Considering the fact that the applicants have been summoned to appear in the Police Station as well as the contents of the diary dt.31.3.2014, there appears to be reasonable ground for apprehension of arrest in a non-bailable offence u/s 5(a) Explosive Substances Act. The said offence is undoubtedly a serious offence. There is no material to suggest that the applicants have not been cooperating with the investigation and no

submission on the apprehension of the applicants hampering with the investigation or tampering with evidence. There is also no material to draw an inference that the applicants have previously undergone imprisonment on conviction by a court in respect of cognizable offence. A careful reading of the case diary revealed material witnesses have been examined including the main accused who is now in judicial custody. I am also of the considered view that there is no reasonable apprehension of the applicants absconding.

Accordingly, in the event of arrest applicants Zothanmawia and Dasrat Lal Kanu shall be released on bail with the following conditions:-

a) That they shall regularly report themselves to the Investigating Officer once every fortnight (w.e.f 15.4.2014) until the same is dispensed with by the Investigating Officer, in addition,

b) They shall make themselves available for interrogation as and when required by the Investigating Officer for the purpose of investigation and matters connected with investigation.

c) They 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 any Police Officer/Court

d) They shall not leave the State of Mizoram without the previous permission of the Court.

Needless to mention, violation of any of the conditions imposed will entail cancellation of the pre-arrest bail.

With the above Order, the application stands disposed off.

Sd/- HELEN DAWNGLIANI
Addl. District & Sessions Judge
Aizawl Judicial District, Aizawl

Memo No:...../AD&SJ(A)/2014 : Dated Aizawl, the 16th April, 2014
Copy to: -

1. Zothanmawia } through Counsel
2. Dasrat Lal Kanu } Mr. R. Lalhmingmawia, Advocate
3. Officer-in-Charge, Champhai Police Station along with the Case
Diary of Champhai PS Case No. 39/14.
4. Registration Section.
5. Guard File.
6. Case Record of Anti Bail No. 5/14.
7. Case Record of Anti Bail No. 6/14.

P E S H K A R