

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

Anticipatory Bail Appln. No.26/2014
In Bawngkawn PS Case No.93/2014
U/s 467/468/471/420 IPC

Mr. P.C. John Lalremzuala @ John P.C. Rema

S/o P.C. Zaruma (L)

R/o Bungkawn Dam Veng

Aizawl

...

Accused/Applicant

Versus

State of Mizoram

...

Respondent

A N D

Anticipatory Bail Appln. No.27/2014
In Bawngkawn PS Case No.93/2014
U/s 467/468/471/420 IPC

Mr. P.B. Lalbiakliana

S/o P.C. Zaruma (L)

R/o Bungkawn Dam Veng

Aizawl

...

Accused/Applicant

Versus

State of Mizoram

...

Respondent

Date of hearing

...

09.07.2014

Date of Order

...

16.07.2014

A P P E A R A N C E

For the accused/applicant

...

Mr. T. Lalnunsiana, Advocate

For the respondent

...

Mrs. Rose Mary, Addl. PP

Ms. Rosy, Asst. PP

O R D E R

1. By this common Order, the above-mentioned two applications u/s 438 Cr.PC are being disposed off.

2. Case Diary is received from the Investigating Officer and the Ld. Counsels are heard.

3. The submission of Mr. T. Lalnunsiana, the Ld. Counsel for the applicants in brief is that the applicant PC John Lalremzuala is a Government working as Hindi Teacher and Joint Secretary of the Mizoram Hindi Prachar Sabha. Applicant PB Lalbiakliana is the Chairman of Mizoram Hindi Prachar Sabha (Sabha for short).

On 21.5.2014 the Secretary, Mizoram Scholarship Board lodged a written FIR at Bawngkawn Police Station to the effect that some Hindi schools apply for Post Matric/Tribal Scholarship by using fake and forged marksheets. As per the said information Bawngkawn PS case No.93/2014 dt.21.5.2014 u/s 467/471/420 IPC and investigated into. The Ld. Counsel submitted that some institutions applied for scholarship by using fake marksheets and as a matter of practice marksheets are issued by the Sabha wherein both the applicants are Board members and that there is great danger of them being arrested in a non-bailable offence. While submitting the innocence of the applicants, the Ld. Counsel, inter alia submitted that scholarships are directly applied to the Mizoram Scholarship Board by the schools and institutions without going through the Sabha. The Ld. Counsel further submitted that, sensing some malpractices during the academic year 2012-13, the Sabha made an advice to the concerned authorities requiring the applicants to apply Scholarships through the Sabha so that any malpractice could be easily tapped but the same was not complied with during the said period. In support of his submission the Ld. Counsel has placed reliance in Annexures 5, 6,7, 8-13. It is also urged by the Ld. Counsel that arrest of the petitioners would damage propagation of Hindi in the State itself as process is on with the Union Ministry for providing fund to build a separate office for the Sabha and any problem or arrest within the sabha members can cause doubt to the Government which will be a loss to the society as a whole. The Ld. Counsel argued that the petitioners do not have any criminal antecedents, that they are native of Mizoram and that they are willing to fully cooperate with the investigation.

I have also heard the Ld. APP who submitted that considering the seriousness of the offence and the stage of investigation it would not be proper to grant pre-arrest bail to the appcanats as the same can hamper investigation.

4. The honb'le Apex Court in the case of *Siddharam Satlingappa Mhetre vs State Of Maharashtra And Ors.* Reported in (2011) 1 SCC 694 has held as follows:-

“95. The gravity of charge and exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court.

96. *It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. (emphasis supplied)*

97. *A great ignominy, humiliation and disgrace is attached to the arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage. Whether the powers under section 438 Cr.P.C. are subject to limitation of section 437 Cr.P.C.?*

98. *The question which arises for consideration is whether the powers under section 438 Cr.P.C. are unguided or uncanalised or are subject to all the limitations of section 437 Cr.P.C.? The Constitution Bench in Sibbia's case (supra) has clearly observed that there is no justification for reading into section 438 Cr.P.C. the limitations mentioned in section 437 Cr.P.C. The Court further observed that the plenitude of the section must be given its full play. The Constitution Bench has also observed that the High Court is not right in observing that the accused must make out a special case; for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by section 438 Cr.P.C. to a dead letter. The Court observed that we do not see why the provisions of Section 438 Cr.P.C. should be suspected as containing something volatile or incendiary, which needs to be handled with the greatest care and caution imaginable*

119. *This Court in the Sibbia's case (supra) laid down the following principles with regard to anticipatory bail: a) Section 438(1) is to be interpreted in light of Article 21 of the Constitution of India.*

b) Filing of FIR is not a condition precedent to exercise of power under section 438.

c) Order under section 438 would not affect the right of police to conduct investigation.

d) Conditions mentioned in section 437 cannot be read into section 438.

e) Although the power to release on anticipatory bail can be described as of anuot; character this would not justify the conclusion that the power must be exercised in exceptional cases only ; Powers are discretionary to be exercised in light of the circumstances of each case.

f) Initial order can be passed without notice to the Public Prosecutor. Thereafter, notice must be issued forthwith and question ought to be re- examined after hearing. Such ad interim order must conform to requirements of the section and suitable conditions should be imposed on the applicant”

5. The complaint contained in the FIR is no doubt a serious offence. Case diary is carefully examined. The content of the FIR and also the Minutes of the Meeting dt. 23.3.2014 are read. I have also read the statements of witnesses recorded so far including the statements PB Lalbiakliana one of the applicants and the complainant, seizures made and the nature of documents seized. The statement of the complainant is compared/read alongwith the Minutes of the said meeting dt.23.3.2014. The FIR was lodged on 21.5.2014. As per the Case Record, the last entry or last stage of investigation recorded in the Case diary is that of 5.6.2014. The present applications were filed on 20.6.2014. The date of FIR, date of last entry in the case diary and the date of the present application are also taken into consideration.

6. The matter is now at the stage of investigation and it is not the business of this court to comment on the investigation. Suffice it say at this stage, there is no material from the record to draw an inference that the applicants are not cooperating with the investigation or that they tamper (or there is danger of tampering) evidence or that try to influence people acquainted with the case or that try to flee from justice.

7. Keeping in mind the decision of the honble Apex Court and applying the same to the present case, I find that reasonable ground has been made out to allow the application.

8. Accordingly, in the event of arrest the applicants PC John Lalremzuala and PB Lalbiakliana shall be released on bail on their furnishing a personal bond in the sum of Rs.20,000/- each with one surety each in the like amount to the satisfaction of the arresting officer.

The applicants are directed to join the investigation and fully cooperate with the investigating agency and make themselves available to the investigating agency whenever required in connection with the investigation of the instant case. Secondly, 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 the court or to the Police officer.

9. Case diary shall be returned to the Investigating Officer through the Addl.PP appearing in this Court.

10. With the above Order, both 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 July, 2014**

Copy to: -

1. P.C. John Lalremzuala
2. P.B. Lalbiakliana
3. District & Sessions Judge, Aizawl Judicial District, Aizawl.
4. PP / Addl. PP, Aizawl District, Aizawl.
5. Officer-in-Charge, Bawngkawn Police Station.
6. Arresting Officer/Investigating Officer through Officer-in-Charge, Bawngkawn Police Station.
7. Registration Section.
8. Guard File.
9. Case Record of Anticipatory Bail Appln. No. 26/2014.
10. Case Record of Anticipatory Bail Appln. No. 27/2014.
11. Calendar Judgment.

P E S H K A R