

Sangliana  
S/o Darbuanga(L)  
R/o Luangmual, Aizawl ... Accused/Applicant

State of Mizoram ... Respondent

## APPEARANCE

## ORDER

1. This application u/s 438 Cr.P.C have been filed for granting bail to the applicant in the event of arrest.
2. I have heard the Ld. Counsel for the applicant and also perused the Report submitted by the Officer-in-Charge, Vaivakawn Police Station.
3. As per the Report it is seen that the applicant possessed without any Retainershi Licence a DBBL Gun Made in India under Registration No.17522 alongwith Licence No.3873/Azl beloinging to Darbuanga S/o Dokhuma of Reiek.
4. On the other hand, upon hearing the Ld. Counsel for the applicant as well as upon perusal of the record it is noticed that as Darbuanga S/o Dokhuma R/o Reiek died on 11.7.1991 his son Sangliana of Luangmual has been declared his legal heir in respect of moveable and immovable properties by the Magistrate First Class, Sub.District Council Court in Heirship Certificate No.107/1997 dt.12.12.1997.
5. The ingredient of the provision of section 25(1B)(a) Arms Act is also examined and compared with the manner in which the firearm came to the possession of the applicant.
6. The honble 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 :-

*“93. It is a matter of common knowledge that a large number of undertrials are languishing in jail for a long time even for allegedly committing very minor offences. This is because section 438 Cr.P.C. has not been allowed its full play. The Constitution Bench in Sibbia's case (supra) clearly mentioned that section 438 Cr.P.C. is extraordinary because it was incorporated in the Code of Criminal Procedure, 1973 and before that other provisions for grant of bail were sections 437 and 439 Cr.P.C. It is not extraordinary in the sense that it should be invoked only in exceptional or rare cases. Some courts of smaller strength have erroneously observed that section 438 Cr.P.C. should be invoked only in exceptional or rare cases. Those orders are contrary to the law laid down by the judgment of the Constitution Bench in Sibbia's case (supra). According to the report of the National Police Commission, the power of arrest is grossly abused and clearly violates the personal liberty of the people, as enshrined under Article 21 of the Constitution, then the courts need to take serious notice of it. When conviction rate is admittedly less than 10%, then the police should be slow in arresting the accused. The courts considering the bail application should try to maintain fine balance between the societal interest vis-a-vis personal liberty while adhering to the fundamental principle of criminal jurisprudence that the accused that the accused is presumed to be innocent till he is found guilty by the competent court”.*

7. Considering the facts and circumstances of the case, the nature of the offence, the antecedents of the applicant, there being no report that he is not cooperating with the investigation and keeping in mind the view adopted by the honb'le Apex Court while dealing with an application u/s 438 Cr.P.C, I find that sufficient ground has been made out to enlarge the applicant/accused on bail.

8. The applicant is directed to join the investigation and fully cooperate with the investigating agency. In the event of arrest the appellant shall be released on bail on his furnishing a personal bond in the sum of Rs.20,000/- with one surety in the like amount to the satisfaction of the arresting officer.

9. 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 11<sup>th</sup> July, 2014**

**Copy to: -**

1. Sangliana through Counsel Mr. Lalramhluna, Advocate.
2. District & Sessions Judge, Aizawl Judicial District, Aizawl.
3. PP / Addl. PP, Aizawl District, Aizawl.
4. Officer-in-Charge, Vaivakawn Police Station.
5. Arresting Officer/Investigating Officer through Officer-in-Charge,  
Vaivakawn Police Station.
6. Registration Section.
7. Guard File.
8. Case Record.
9. Calendar Judgment.

**P E S H K A R**