

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

Anticipatory Bail Appln. No.12/2014
In CrI.Tr. No.561/2014
u/s 376 (1) IPC

Vanlalvena S/oTawkhleisanga
R/o Zokhawthar, Champhai District
Mizoram Accused/Applicant

Versus

State of Mizoram Respondent

Date of hearing 20.5.2014

Date of Order 22.5.2014

APPEARANCE

For the accused/applicant Mr. Lalchhanliana Khiangte
Ms. Melody L. Pachuau
Ms. Mary Lalruatkimi
Ms. K.Vapawngia
Mr. K. Lalchhanhima, Advocates
For the respondent Mrs. Rose Mary, Addl. PP
Ms. Rosy, Asst. PP

ORDER

1. This Pre- arrest bail application has been filed u/s 438 Cr.P.C who is apprehending arrest in connection with the offence punishable u/s 376(1)IPC.
2. Heard the Ld. Counsels. SI/Lalsangpuii CAW Cell, the Investigating Officer appeared in person alongwith the case diary.
3. Mr. Lalchhanliana Khiangte submitted that in the FIR it is clearly written that the victim consumed liquor voluntarily. She asked for water and her friends gave her water which she consumed not knowing whether it was actually water or something else. According to the Ld. Counsel from the FIR itself, it is clear that the victim passed out due to drunkenness. This clearly shows that she has loose character, she was at fault and voluntarily put herself in a vulnerable situation. The Ld. Counsel argued that the accused/applicant and co-accused Helen Sangneihpari were having an affair. The two of them have often shared a bed and on that night also both of them were sharing a bed. The accused/applicant does not know what happened between the other man in the house and the victim. They were sleeping in the house of co-accused Helen Sangneihpari who is a weaver and on the night the parents of the victim came to the house at about 9:00pm. The Ld. Counsel also

stated that the other man in the house is a friend of the applicant but they did not go to the house together and all of them, including the victim were consuming liquor. According to the Ld. Counsel, the applicant does not know whether his said male friend was still present or not when the parents of victim came to the house. The Ld. Counsel also submitted that the applicant is a permanent resident of Zokhawthar, he has no previous criminal cases and is actively involved in Church activities. As such his arrest and detention may spoil his reputation and that the applicant is ready to cooperate with the investigation. It is also submitted by the Ld. Counsel that the applicant was working Zokhawthar and maybe because of the location of the village the investigating officer could not contact him, but he did not deliberately run away from the investigating agency.

SI/Lalsangpuii CAW Cell, Investigating Officer by relying on the Case Diary submitted that the present applicant invited the other man to visit/go to the house of Helen Sangneihpari. This means that the applicant is well acquainted with the said man. The applicant and co-accused Helen Sangneihpari were having an affair and they were sharing the same bed. Considering the place of occurrence and the area of the room, it is not humanly possible for the applicant not to know what was going on inside the house. The Investigating officer submitted that strenuous efforts were made to secure the presence of the applicant in the Police Station, but he could not be contacted, but fortunately, when they could talk to him, they told him to appear in the PS but he did not appear. Thereafter, after he obtained interim anticipatory bail, he appeared in the PS, some interrogation was done and he was told to appear again. His mobile phone number was also taken. But the accused failed to appear and he switched off his mobile phone. According to the Investigating officer, the applicant is very important for investigation at this stage since it is learnt, so far, that there were two men (including the applicant) at the place of incident. According to the I/O till date, the applicant continued to switch off his mobile phone.

Supplementing the submission of the Investigating Officer, Mrs. Rose Mary, the Ld. Addl.PP submitted that the previous conduct of the accused clearly shows that he will not cooperate with the investigation if he is granted pre-arrest bail. The Ld. Counsel submitted the offence of rape is a serious crime and it is not just and proper that investigation cannot be properly conducted due to absence of accused. The Ld. Addl.PP therefore prays to reject the application.

4. An application u/s 438 Cr.P.C can be moved only by a person who has not already been arrested and who has reasonable apprehension of being arrested in a

non-bailable offence. In the case at hand, the accused moved this Court for grant of pre-arrest bail in connection with Vaivakawn PS Case No.83/2014 u/s 376(1) IPC. The offence punishable u/s 376(1) IPC is a non-bailable offence. Vide Order dt.6/5/2014 the accused was granted interim anticipatory bail. The case diary shows that applicant appeared at the PS on 7.5.2014 which is after he obtained the interim anticipatory bail. He was interrogated. According to the Investigating Officer, they took the mobile phone number of the accused and told him to appear again, but he failed to do so. The Diary revealed that on 15.4.2014, the Investigating officer sent out W/T message to the O/C Champhai Police Station to arrest the accused/applicant. The Diary has clearly mentioned that hectic attempts were made by the investigating agency to secure the presence of the applicant. But such attempts failed and the applicant appeared before them only on 7.5.2014 after obtaining interim anticipatory bail and once again failed to cooperate with the investigation by failing to comply with the direction to report himself again before the Police.

5. Considering the seriousness of the offence, the manner and circumstances in which it was committed, the conduct of the applicant in relation to the investigation done so far, I am of the considered view that no reasonable ground exist to grant pre-arrest bail to the accused.

6. With the above order, the application stands rejected.

Sd/- HELEN DAWNGLIANI
Additional District & Sessions Judge
Aizawl Judicial District : Aizawl

Memo No..... AD & SJ (A)/2014 : Dated Aizawl, the 22nd May, 2014
Copy to :-

1. Vanlalvena through Counsel Mr. Lalchhanliana Khiangte, Advocate.
2. PP/Addl. PP/APP, Aizawl.
3. Investigating Officer through Officer-in-Charge, CAW Cell.
4. Registration Section.
5. Guard File.
6. Case record.
7. Calendar Judgment.

P E S H K A R