

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

Bail Appln. No.529/2014
In Crl.tr. No.553/2014
U/s 109/505(1)(b)/120(b) IPC
R/w Sec.66(a)(b) IT Act

Ref:- Aizawl PS Case No.107/2014 dt.13.4.2014 u/s 109/505(1)(b)/120(b) IPC
R/w Sec.66(a)(b) IT Act

Sh. K. Chhawnthuama
S/o Thangluaia (L)
R/o Durtlang (KV Complex)
Aizawl

.....

Accused/ Applicant

Versus

State of Mizoram

.....

Respondent

Date of Hearing

.....

16.5.2014

Date of Order

.....

19.5.2014

APPEARANCE

For the Accused/Applicant

.....

Mr. L.H. Lianhrima, Advocate

For the Respondent

.....

Mr. R.C. Thanga, Spl.PP

Mrs. Rose Mary, Addl. PP

Ms. Rosy Lalnuntluangi APP

ORDER

1. This bail application u/s 439 Cr.P.C have been filed for enlargement of the above-named accused/applicant on bail.

2. Heard the Ld. Counsel for the applicant, the Ld. Spl.Public Prosecutor and the Investigating Officer who appeared in person alongwith the Case Diary in original.

3. The facts of the case in brief leading to the filing of the instant bail application may be highlighted as follows:-

A. On 13.4.2014 Sh. Christopher K. Thanga, Secretary, Mizoram Pradesh Congress Committee (MPCC for short), Human Rights & Legal Department, Mizoram, Aizawl lodged a written FIR at Aizawl Police Station. In the FIR, the informant mentioned that on the night of 4.4.2014 accused K.Chhawnthuama

appeared in the local TV accusing the present Congress ministry of rigging the EVM in the last Assembly Election resulting in the thumping victory of the party. The speech made specific allegation against the honb'le Chief Minister, who is also the President of MPCC, some members of the Media Cell of MPCC, Deputy Commissioner Serchhip, some Election officials and a Non Mizo EVM Engineer. As a result of the speech many people marched to the residence of the Honb'le Chief Minister and if not for the timely and efficient action of the Police the situation could go very bad. In the FIR it was also stated that on 8.4.2014 the said speech was uploaded in the Youtube. The informant further mentioned that one Lalmuanhlua of Durtlang Mualveng, in his statement before the Police stated that accused K.Chhawnthuama and one Michael Chhakchhuak were having deep connection. On 8.4.2014 the said Lalmuanhlua uploaded his speech in the Youtube accusing the present Chief Minister of being involved in a number of serious criminal activities. According to the informant, accuseds K.Chhawnthuama, Lalmuanhlua and Michael Chhakchhuak acted with common intention.

B. On the basis of the said FIR, Aizawl PS Case No.107/2014 dt.13.4.2014 u/s 109/505(1)(b)/120(b) IPC R/w Sec.66(a)(b) IT Act was registered. The Record revealed that Investigation was handed over to Cyber Cell, SP CID (Crime) Mizoram, Aizawl.

C. As per Record, accused K.Chhawnthuama and K.Lalhruaitluanga were arrested by the Commandant, 3rd IR (Mizo) Battalion, Mangaldai, Assam on the night of 14.4.2014 @ 11:15pm in a hotel at Guwahati. Arrest memo was prepared and some seizures were made. On the next day, i.e 15.4.2014 they were brought to Aizawl by flight. As per Order dt.15.4.2014, the Ld. Chief Judicial Magistrate, Aizawl allowed the prayer made by the Police for 72 hours Police Remand. However, on 16.4.2014 due to fear of law and order problem, the prayer for judicial remand was allowed by the Ld. CJM. Accordingly, from 16.4.2014, the accused/applicant have been in judicial custody.

D. Bail application registered as Bail Appln. No. 453/2014 which was submitted before the Ld. Chief Judicial Magistrate was rejected vide Order dt.5.5.2014.

4. Mr.LH Lianhrima Ld. Counsel for the accused petitioner submitted that the bail application before the Ld. CJM was rejected vide Order dt.5.5.2014 on ground of law and order problem. According to the Ld. Counsel there is no law and order

problem due to the instant case and the same is baseless and there is nothing on record of such law and order problem due to the instant case or arrest of the petitioner. The accused have been charged with the offence punishable u/s 109/505(1)(b)/120(b) IPC r/w Sec.66A(a)(b) IT, except the charge u/s 505(1)(b) IPC all the other offences are bailable offences. The punishment provided u/s 505(1)(b) is imprisonment upto 3 years, or with fine or with both. Keeping in mind the ingredient of section 505 IPC for which the accused is being charged, the same does not fall within section 437 Cr.P.C. It is further submitted by the Ld. Counsel that not to speak of the accused having previous conviction (as provided u/s 437 Cr.P.C) the accused is a Church Elder of Presbyterian Church, actively involved in Church activities and presently shouldering the responsibility of "Bial Ziaktu". The Ld. Counsel strenuously argued that the accused is man of principal who fearlessly fight corrupt practices and put in all out efforts for development. According to the investigating agency themselves, the wealth of the accused is worth Rs.36 crores, he has a wife and family to look after and a reputed boarding school. As such there is no question of him fleeing from justice. It is further submitted by the Ld. Counsel that in the instant case it has come to the knowledge of the accused that there was some mal practices in the recently concluded Assembly election. Having heard the same, the accused did his best to find out what actually went wrong, the accused did not do anything wrong by acting upon the information he received and it was only an attempt to find out the truth which reflect the mind of the accused that he has strong desire of having a clean society. However, surprisingly, he was arrested. The Ld. Counsel submitted that some people endorsed to the principle of the accused, "Phantom Fan Club" came into existence. According to the Ld. Counsel, not to speak of law and order problem, not even a traffic jam have been caused by the peaceful gathering of the said fan club. Mr.LH Lianhrima argued that the Ld. Chief Judicial Magistrate placed reliance on many decisions of the Honb'le Apex Court, but the Said Ld.CJM failed to follow the principle laid down in the decisions cited by her and did not apply her mind to the decisions cited by her. The Ld. Counsel produced the earlier bail order granted to the accused and emphasized that only three conditions were imposed and that the accused has not violated any of the conditions so imposed. According to the Ld. Counsels, it is the right of every Indian citizen to assemble peacefully. In the case at hand, the supporters of the accused has every right to express their freedom of speech and they have every right to assemble without arms. In support of his submissions, the Ld. Counsel has placed reliance in the following cases:-

1. State of Rajasthan, Jaipur versus Balchand @ Baliay, (1977) 4SCC 308
2. Gurcharan Singh & Ors versus State (Delhi Administration) (1978) 1SCC 118
3. N.Sengodan versus State of Tamil Nadu, (2013)8SCC 664

Mr.RC Thanga the Ld. Special Public Prosecutor submitted that the accused was earlier arrested for sending offensive messages to the honb'le Chief Minister which was more or less in the form of threat. He was released on bail on 20.12.2013. While on bail, taking advantage of his liberty, he made statements in various print media, television, internet and various social network which were of graver magnitude. Due to the speech of the accused which was telecast on the night of 4.4.2014 some people marched to the Chief Minister's bungalow but fortunately they could be dispersed by the Police. As such the intention of the accused cannot be good. Thereafter, FIR was lodged by Christopher leading to the arrest of the accused and K.Lalhruaitluanga at Guwahati on the night of 14.4.2014. They were brought to Aizawl by flight on the next day and his fans assembled. There was road blockade creating law and order problem which is clearly reflected in the Order passed by the Ld. CJM. According to the Ld. Spl. PP, the statements made by the accused invoked the sentiments of the public so much that those who believe would not hesitate to take the life of those persons implicated in the speech, to those who does not believe him, there is danger of him being put to death. The accused created havoc and disturbance and he divided the people of Mizoram into two groups. According to the Ld. Spl.PP, at this juncture it is for the safety of the accused himself (themselves) that they should be detained. If he is released on bail, it is clear that he will commit another offence of the same nature as he is being fueled by many people including Politicians. The Ld. Counsel submitted that if the accused is released on bail he will meet Michael who is the main accused and that there are reasonable ground to believe that the accused actually committed the offence. The offence may not have severe punishment but it creates disturbance in the society and as the accused is a millionaire he can easily hamper investigation. In support of his submissions the Ld. Counsel has placed reliance in the case of:-

1. Dr.Ram Manohar Lohia versus State of Bihar (1966) AIR 740
2. State through CBI versus Amaramani Tripahi Cr.Appeal No.1248/2005 decided by the honble Apex Court on 26.9.2005
3. CBI versus Vijay Sai Reddy Crl.Appeal No.729/2013 decided by the honble Apex Court on 9.5.2013.

I have also heard the Investigating Officer. Since the investigation done so far is ready for perusal from the case diary, on the sum and substance of his submission is highlighted. He stated that the lock is with Michael and that Michael is not yet arrested. The i/o also submitted that further investigation is also to be done through a Service provider and statements of accused is recorded over and over again as the accused told his fans that the police recorded his wrong statement.

5. Even though there is no straitjacket formula for consideration that are to be taken in bail application, the courts generally take into account the nature of the charge, the nature of accusation, the nature of evidence in support of accusation, severity of punishment to which the accused may have been subjected, the danger of accused absconding or tampering with evidence, the health age and sex of accused, the social position or status of the accused and whether grant of bail will thwart the course of justice.

6. In the case at hand, the Ld.Spl.PP in his usual fairness submitted that the offences against which the accused is being charged are not severe in terms of punishment. But the Ld. Counsel strenuously submitted that the matter has caused a lot of disturbance in the society.

Accordingly, the case diary is closely examined. It is noticed that on the night of 14.4.2014 the accused and co-accused K.Lalhruaitluanga were arrested in a hotel at Guwahati. On 15.4.2014 when the accused and said co-accused K.Lalhruaitluanga reached Aizawl by flight there was road blockade at Zero Point by some 'sympathizers' of the accused. The accused persons were then taken to Sairang police Station. The accused/applicant appeared before the crowd on being escorted by the SDPO Aizawl south. This gesture pacifies the crowd who dispersed soon after. On the same afternoon the accused persons were taken to 5th IR Bn. Headquarters, Lungverh and interrogated at some length till night. 72 hours Police Remand was allowed by the Ld. CJM, Aizawl. On the same night/early hour of 16.4.2014 they were taken to Aizawl Police Station. However, on the night of 16.4.2014 it was decided that the two accused persons be remanded to judicial custody. Accordingly, from 16.4.2014 the accused person have been in judicial custody till date. As per record, no untoward incident due to arrest/detention of the accused was recorded on 16.4.2014. Hence it appears that the decision so taken for judicial remand of the accused was more of a precautionary measure than reasonable apprehension of law and order problem.

As per record, on the late night of 21.4.2014 Lalmuanhlua S/o Vanlalliana R/o Durtlang Mual Veng was apprehended by personnel of CID (SB) in Aizawl and detained in Aizawl Police Station. He was formally arrested on 22.4.2014. It is seen from the record that camp court was held at Aizawl PS to avoid law and order problem that may arise if he is produced in the Court and the prayer for 72 hours Police custody was allowed. It may be noticed that here also it was only fear of law and order problem. There is no record of any disturbance being caused in the city due to apprehension and arrest of the said Lalmuanhlua. There is no material suggesting reasonable apprehension of law and order problem and there is no mention of any disturbance being created during the said period.

7. In the case at hand, the only non-bailable offence charged against the accused is offence punishable u/s 505(1)(b) IPC which reads as under :-

“505. Statements conducing to public mischief. – (1) whoever makes, publishes or circulates any statement, rumour or report-

(a).....

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or

(c).....

Shall be punished with imprisonment which may extend to three years or with fine or with both”

8. The FIR was lodged on 13.4.2014 complaining the speech made by the accused/applicant in the local TV channel on 4.4.14 which was uploaded in the Youtube on 8.4.2014. The record shows that a procession was carried out on 5.4.2014.

9. Accordingly, it appears from the record that the speech of the accused on 4.4.2014 touched the sentiments of the people wherein some of them marched to the residence of the hon’ble Chief Minister. On the next day i.e. 5.4.2014 a procession was carried out due to the said speech. Thereafter on 8.4.2014 the speech of the accused was uploaded in the Youtube. There is no untoward incident recorded as a result of the same. Subsequently, on his arrest when the accused was brought to Aizawl there was road blockade by his ‘sympathizers’ who assembled in front of Sairang PS. As per record, the crowd dispersed after the accused appeared before them with Police personnel. Thereafter, there is no

material/documents from the record to show that the supporters of the accused or his fan club created any trouble or disturbance within the city so as to cause reasonable apprehension to the authorities of law and order problem. There is also no report or any material to show of disturbance being created when the accused is produced before the Court during his detention in judicial custody. By now it is more than one month from the arrest of the accused. The fact that no disturbance is created by any person or group of persons as a result of the arrest and detention cannot be lost sight of while dealing with the submission of apprehension of law and order problem.

10. The other ground of objection is that the main accused Michael Chhakchhuak have not been arrested and the accused stated that he gave the lock to the said accused. In this regard, is it justice to detain a person in custody so long as the co-accused is not arrested? Is it reasonable that one accused will continue to be behind the bars until the others are arrested? It may be borne in mind that so far, as per record, the accused was interrogated on 15.4.2014 and 28.4.2014 apart from this, his requirement in the investigation is not shown. The record also revealed that his statements are substantially the same. Seizures have been made and his Bank statements have also been taken. On the other hand, it is seen from the record as well as from the submission that the main accused is Michael Chhakchhuak. If that be so, what benefit will it be to detain the accused in custody?

11. It has also been submitted by the Ld. Spl. PP that it appears the accused had actually committed the offence. Mental element is the most crucial consideration for an offence. I have carefully perused the statements of the accused from the case diary. At the stage of bail, it would not be proper for this court to comment on the guilt or otherwise of the accused.

12. Keeping in mind the stage of the investigation, statements of the accused/applicant as well as the statements of the other accused persons before the Police, seizures made, reputation of the accused, the position he enjoys in the Church as well as in the society and his antecedents, I am of the considered view that reasonable ground exist to enlarge the accused K.Chhawthuama on bail.

13. Accordingly, accused K.Chhawthuama is enlarged on bail to the satisfaction of the Ld. Chief Judicial Magistrate, Aizawl.

14. Though the offences brought out against the accused does not fall under section 437(3) Cr.P.C, considering the nature of the case, the sentiments of the

people it involved and a political colour added to it (as submitted by the Ld. Spl. PP the accused is fueled by many people including politicians), I am of the view that it would be just and in the interest of the public at large to impose the following conditions:-

- i) he shall attend court regularly.
- ii) he shall report himself to the Investigating Officer once every week until the same is dispensed with.
- iii) in addition, he shall make himself available to the investigating officer as and when required in connection with investigation of the case.
- iv) he shall not make any speech on the TV, internet or other social network in connection with this case or any other matter which can incite the sentiments of the people.
- v) he shall not write , publish or circulate any statement, spread rumour or make a report, directly or indirectly, which can incite a class of people to commit offence against the State or which can disrupt public tranquility
- vi) he shall not leave the State of Mizoram without the prior permission of the Court.
- vii) if for some reason he is compelled to address his 'sympathizers', the content of his speech will be with the prior approval of the Investigating Officer.
- viii) he shall not commit any offence or similar offence of which he is accused.
- ix) he shall not directly or indirectly make any inducement, threat or promise any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to police officer or tamper evidence.

Needless to say violation of any of the conditions will entail cancellation of bail.

15. Original Case Diary be handed over to the case I/O through the Special Public Prosecutor.

16. With the above Order, the bail application stands allowed.

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

Memo No:...../AD&SJ(A)/2014 : Dated Aizawl, the 19th May, 2014
Copy to :-

1. K. Chhawnthuama through Counsel Mr. L.H. Lianhrima, Advocate.
2. Chief Judicial Magistrate, Aizawl District, Aizawl.
3. Spl. Public Prosecutor, Aizawl.
4. Investigating Officer through Spl. Public Prosecutor who shall also hand over the Case Diary.
5. Registration Section.
6. Guard File.
7. Case Record.
8. Calendar Judgment.

P E S H K A R