

(2008) 03 GAU CK 0020
In the Gauhati High Court

Abdul Kakim

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 10-03-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 327, 401, 440, 446
Penal Code, 1860 (IPC) — Section 489B, 489C

Citation : (2008) 2 GLT 90

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H. Barua, J.—Heard Mr. M.M. Ali, learned Counsel for the petitioner and also heard Mr. N. Sailo, learned PP for the State of Mizoram.

2. Revision petitioner Sh. Abdul Karim was arrested by Mamit Police in connection with Mamit Police Station Case No 1389/07 and 1512/07 registered under Sections 489B & 489C of the IPC and put him behind the bar. Revision petitioner was, subsequently released on bail after completion of statutory period of 90 days as provided u/s 167 Cr.P.C since the investigating agency failed to return both the cases in final form within the statutory period. Bail was granted by the learned ADM(J), Aizawl for Rs. 1,00,000/- in both the cases with a surety of like amount. But the revision petitioner being unable to arrange surety/sureties as directed by the court, preferred an application again before the ADM (J), Aizawl for reduction of the bail amount. The learned court, after taking into consideration of the matter in its entirety reduced the bail amount to Rs. 50,000/-. But despite such reduction, the revision petitioner still is unable to procure surety/sureties since none agrees to stand as such in view of amount of bail ordered.

3. Revision petitioner is still languishing in Jail. Hence, this present revision petition has been filed seeking further reduction in the bail amount.

4. Mr. M.M. Ali, learned Counsel for the revision petitioner in support of the application submitted that the revision petitioner, being a man hailing from Tripura is unable to procure a surety for Rs. 50,000/- as per order of the court and for that reason, he has filed this application under Sections 482/327/401 of Cr. P.C. It is further submitted by him that the intention behind the grant of bail with surety/sureties is to secure the presence of the accused in a subsequent proceeding that may be proceeded against him before a court and to avoid abscondence. Therefore, the court while dealing with a bail application must take all matters into consideration including the gravity of the offence(s) alleged and the imprisonment provided therefore.

5. Intention of the court should not be reflected otherwise by ordering a bail for an excessive amount which would not be a reach of the common people. According to Mr. MM. Ali, with that intention, legislature has incorporated Section 440 in the Code itself. Mr. M.M. Ali, therefore urges this Court to reduce the amount enabling the accused to procure surety for his release from Jail. It is also submitted by him that there is no chance of absconding or jumping from bail, since accused has a root in the society.

6. Mr. N. Sailo, learned PP for the State of Mizoram citing the provisions of Section 489B & 489C IPC and the punishment provided thereunder submitted that there is no reason for further reduction in the bail amount since the alleged commission of the offence are of serious in nature. Under the provisions of Section 489B IPC, life imprisonment is provided while punishment of 7 years is provided u/s 489C of the IPC. Mr. N. Sailo, therefore, in view of the punishment provided in the Code itself prays this Court not to allow further reduction in the bail amount.

7. It is true that granting of bail is a judicial act which cannot be delegated. In the absence of any law or rule, the Judge or the Magistrate must personally satisfy himself as to the reliability and solvency of the sureties. In the light of Section 446 of the Code, Magistrate may, insist that security alone can be termed sufficient when backed by valuable property of the value of the amount which can be secured in case of abscondence of the accused. But for the purpose of securing the attendance of the accused, it is not always necessary that excessive amount is to be ordered. Granting of bail is always dependant upon the facts and circumstances of the each case and the nature of the offence alleged.

8. Having considered the submissions of either party and the allegations so made against this accused/revision petitioner, this Court is of the opinion that the bail amount as provided in the order dated 15.2.08 appears to be in the higher side which needs reduction.

9. Accordingly, the bail amount is reduced to Rs. 20,000/- in each case. The conditions provided in the order shall be maintained in both the cases except condition No. 4.

10. This petition is accordingly allowed.