

28 December 2005

To the Federal High Court

Addis Ababa

Accuser: - Federal Prosecutor

Accused: - Engineer Hailu Shawl and others (131 persons)

Pleadings for Bail Submitted by the 92nd, 94th and 95th Accused who are Members of Civil Society Organizations

1. The only charges brought against three of the accused who are members of civil society organizations are those noted under the first charges. From among these charges, the one concerning us is that noted on page 21 of the statement of charges under number 4.
2. This charge states that we the accused, supporting the plans of the accused enumerated from 1st to 39th, have instigated and mobilized mutiny by using the organizations we work in and issuing announcements and declarations in the name of the organizations.
3. Yet, among the 91 pages of documentary evidence and 35 pieces of video and audio evidence submitted by the public prosecutor, there is no evidence especially concerning the 94th accused Netsanet Demissie and the 95th accused Daniel Haile. The public prosecutor has not submitted as evidence any announcement given by Organization for Social Justice in Ethiopia, where Netsanet Demisse works, or from Action Aid Ethiopia, where Daniel Bekele works, or from any institution in which these two organizations have taken part in.
4. One cannot even say that the public prosecutor will corroborate the charges with witnesses since the prosecutor has stated that the alleged crimes have been committed through announcements and declarations made by the organizations we work for. If this had truly happened, it should have been corroborated with documentary evidence.
5. However, since no such actions have been committed and since there is no evidence to support the allegations and the public prosecutor was not able to submit evidence as charged, no evidence has been presented against the two accused (94th and 95th).
6. Similarly, we the accused have not been asked about committing any criminal actions during investigations by the police. Thus, while there is nothing to lead to suspicion that we the accused have committed the criminal action alleged by the public prosecutor, there is no reason for us to be denied our basic and constitutional right to be released on bail just because the public prosecutor has

- brought charges under criminal law provisions pertaining to a serious offence in a context where no charges should have been brought in the first place.
7. One of the most important points that should be considered by this court in ruling on pleadings for bail is whether the charges brought by the public prosecutor are supported by prima facie evidence, is in line with the procedural rules, and that the legal and factual basis is supported by sufficient evidence to warrant the charges.
 8. If this is not done and pleadings for bail and the right to bail are ruled upon solely on the basis of the criminal law provision the public prosecutor chooses to bring the charges, the basic right of any accused person to be released on bail will in fact be determined by the public prosecutor who is the accuser rather than the court. This would be the same as saying that there is no need to submit pleadings for bail to the court.
 9. It is mandatory and essential for this court to examine the circumstances of the charges and the facts of the matter in ruling on the pleadings of the accused for bail. This does not mean that arguments on the issues of law and issues of fact be entertained by the court. Rather the court should examine the circumstances of the case to the extent necessary to give a ruling on the pleadings for bail submitted by the accused. Let alone in a criminal case where liberty is on the balance, the defendant in a civil case is not subpoenaed to respond just because the plaintiff has submitted claims before the court examines the cases and makes sure that there is sufficient cause for the claims. The purpose of this comparison is to indicate that basic rights of the accused should not be taken to be determined by the charges brought as per the wishes of the public prosecutor in the role of the accuser but are to be ruled on by the court after due examination.
 10. Although no evidence has been submitted against the 94th and 95th accused as explained above, the evidence submitted against the 92nd accused who is also a member of a civil society organization is the announcement issued by the Addis Ababa Teachers' Association in which the accused Kassahun Kebede is a member.
 11. The announcement issued by the Addis Ababa Teachers' Association is a call by the association, based on the controversy that arose in our country following the elections, calls on all parties to fulfill their responsibilities in an appropriate and peaceful manner. It does not corroborate the commission of a criminal offence alleged by the public prosecutor. Moreover, the announcement issued in the name of the association belongs to the association rather than the individual Kassahun Kebede.
 12. The other documentary evidence submitted against the 92nd accused Kassahun Kebede is a meeting proceeding document of the Addis Ababa Teachers' Association which does not have any criminal content.

13. In addition, since 92nd and the other accused are not members of the joint platform, the announcements allegedly issued by the previous Ethiopian Teachers Association, Ethiopian Free Journalists' Association, the Ethiopian National Assembly, International Youth Association, Union of Ethiopian Americans, and Ethiopian civic associations who are claimed to be members of Ethiopian Review submitted as evidence is not relevant to our case. Although the presidents of the former E.T.A and E.F.J.A. against which this documentary evidence is intended to be brought are not present in this court, no one with a free conscious will deny that the document has no criminal content.
14. In general, since no supporting evidence has been submitted to corroborate the charges against the 94th and 95th accused, and since the documentary evidence submitted against the 92nd accused does not show that there is sufficient reason to institute charges, there is no legal or factual cause to deny the right of the accused to be released on bail.
15. Article 63 of the Criminal Procedure Code provides that the court may release the accused on bail if the offence the accused is charged with does not carry a penalty of more than fifteen years rigorous imprisonment or the victim of the offence is not expected to die as a result of the offence.
16. As we have already explained under numbers 1 and 2, the part of the charges pertinent to the three members of civil society organizations do not and can not state any thing about the loss of life as a result of the actions of the accused. Since, the charges against these accused and the details of the alleged offence, even as presented by the public prosecutor himself, do not state that loss of life has occurred as a result of the actions of the accused, it is not a ground to deny the right of the accused to bail.
17. In addition, there are not grounds as indicated under article 67 of the Criminal Procedure Code to deny the right to bail of the accused.
18. The rationale for providing constitutional protection for the right to bail is indicative of the importance attached to the protection of the physical liberty of individuals. The legal implication of this protection is that, except being limited through a court decision for very necessary and mandatory legal reasons, the legal principle is to respect the right to bail. This is also based on the age-old principle providing that "*the grant of bail is the rule and denial is only the exception*".
19. The court should note that the initial causes for the pleadings submitted to this court by the accused to be released on bail and the case presented to the court resulted from the dispute following the elections and its effects. Basically, since the issue is a matter of dispute between two political parties, it calls for political resolution as advised even by the international community rather than other measures.

20. Therefore, we believe that it is not only the legal but also the historical responsibility of this court should to ensure our physical liberty by respecting our right to bail.

21. For all the reasons we enumerated above, we do not believe that the public prosecutor has any legal basis, good faith and conscience to object the right of the accused to be released on bail.

Thus, we respectfully plead with the court to enforce the right of the accused to bail.

[Signature]

Daniel Bekele (94th accused)

[Signature]

Netsanet Demissie (95th accused)

[Signature]

Kassahun Kebede (92nd accused)