

Date: 2007

To the Federal High Court
2nd Criminal Bench
Addis Ababa

Accuser: -Federal Prosecutor

Accused: -Engineer Hailu Shawl and others

94th Accused: Daniel Bekele

95th Accused: Nestanet Demisse

Bail Application Submitted by the 94th and 95th Accused

1. The accused have been denied bail right since the public prosecutor filed its charge. The Court has been trying the charge brought by the prosecutor and in accordance with article 141 of the criminal procedure code has ruled that the accused should defend the charge brought against them. The accused submit this application since the above fact created a situation where the bail right of the accused should be reconsidered and granted. We explain why the accused's request for bail right should be reconsidered and granted as follows.
2. It is known that Ethiopia has accepted international human rights agreements and standards and has made them part of the laws of the land. The directly relevant international human rights principle to the case at hand is found under article 39 of the "UN Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment", which was adopted with full vote by the United Nations General Assembly in 1998.
3. According to article 39, it was clearly declared that while a person is denied bail right and is tried being under detention, "...such judicial authority shall keep the necessity of detention under review."
4. It is also known that in accordance with the jurisprudence of the Ethiopian Courts, the issue of denying or granting bail right of an accused is to be decided from time to time looking into the circumstances. Therefore, in accordance with the principle internationally declared regarding the protection persons under detention as well as based on the developed jurisprudence of Ethiopian Courts, the application of the accused for bail right should be reinvestigated and decided.
5. Grounds that enable to grant bail right and that should be taken into account:

- a. The Court, in its previous decision denied the bail right of the accused stating that the cumulative elements for denying bail right specified under article 63 of the criminal procedure code are fulfilled, since the death of human beings in the mutiny that took place in the city was stated in the charge brought by the prosecutor and since article 238 (2) under which the charge was brought is punishable with more than 15 years of imprisonment.
 - b. Now the ruling given by the Court for the accused to defend the charge is under article 238 (1) and (2). This means that one of the two cumulative elements specified under article 63 of criminal procedure code is now missing, since the minimum punishment stated in the article is 3 years imprisonment.
 - c. Since the prosecutor has completed presenting its evidence, there is no risk of interference with evidence.
 - d. In contrast, conscience of a judge would appreciate how important the release of the accused is in order for us to properly defend the very serious charge brought against us. (In particular this has to be seen in light of the charge and evidence presented against us as well as the general circumstance of the case).
 - e. Even though the prosecutor in its charge stated that the accused participated in the crime of conspiracy, the ruling given by the Court stated that the charge of conspiracy does not concern the accused.
 - f. We the accused guarantee to appear before the Court respecting its order and as per the conditions of the bail right it will grant us.
 - g. The ruling for the accused to defend the charge was given in a majority vote and the dissenting opinion stated that the accused should be acquitted. Therefore, by balancing these two views, it would be balanced, just and fair if we the accused defend the charge at least with our bail right respected.
6. Therefore, we kindly request the Court to grant our bail right by taking into account the above points and the general circumstance of the matter.