

GAHC040015492022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : AB 143/2022

1:Goka Tao
Son of Margo Tao, a permanent resident of village-Siji, P.O and P.S-Likhabali,
District- Lower Siang, Arunachal Pradesh.

VERSUS

1:THE STATE OF AP
Represented through Public Prosecutor

Advocate for the Petitioner : T T Tara

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE NANI TAGIA

ORDER

Date : 22-05-2023

Heard Mr. T. T. Tara, learned counsel for the applicant. Also heard Ms. L. Hage, learned Additional Public Prosecutor for the State of Arunachal Pradesh and Mr. L. Perme, learned counsel for the complainant.

2. This is an application, filed under Section 438 of the Cr.P.C., praying for grant of pre-arrest bail to the applicant in connection with Aalo P.S. Case No. 49/2022, registered under Sections 468/471/34 IPC, 1860.

3. The aforesaid Aalo P.S. Case No. 49/2022, under Sections 468/471/34 IPC, 1860, was registered on an F.I.R. dated 14.09.2022, lodged by one Shri Iken Tao, before the Officer-in-charge, Police Station Aalo, against as may as 5 (five) persons including the applicant, alleging commission of criminal conspiracy, impersonation, forgery to cause financial losses/damages and wrongful use of lawful authority/courts(s).
4. The applicant, along with 4 (four) other alleged accused had filed an anticipatory bail application being AB No. 3015/2022, at principal seat of this Court at Guwahati, for grant of pre-arrest bail to the applicants, therein. The aforesaid AB No. 3015/2022 was considered by the Court and vide order dated 13.12.2022, the anticipatory bail application filed by the applicants, therein, which included the applicant herein, was rejected.
5. The order dated 13.12.2022, passed in AB No. 3015/2022 is reproduced hereinbelow:

Date : 13-12-2022

Heard Mr. A. K. Bhattacharyya, learned senior Advocate assisted by Mr. D. K. Bhattacharyya, learned counsel and Mr. G. Alam, learned counsel appearing on behalf of the applicants. Also heard Mr. NNB Choudhury, learned Additional A.G.-cum-Public Prosecutor for the State of Arunachal Pradesh assisted by Mr. A. Chandran, learned Additional Senior Government Advocate representing the State of Arunachal Pradesh as well as Mr. L. Perme, learned counsel appearing on behalf of the informant.

2. This application is filed under Section 438 of the Code of Criminal Procedure, 1973, praying for seeking Anticipatory Bail to the applicants in connection with Aalo P.S. Case No.49/2022, under Sections 468/471/34 of the IPC, 1860, and corresponding G.R. Case No.103/2022.

3. It is submitted by the learned counsel for the applicants that;

(i) The applicant No.1 is one of the partners of M/s Frontier Stone Crusher Unit having its administrative office at Dona Planet, G.S. Road, Guwahati. The applicant No. 1 is also a Director of Khasi Ispat Pvt. Ltd. with its registered

office at S.J. Road, Athgaon, Guwahati.

(ii) The applicant No. 2 is a businessman dealing with supply of stone materials.

(iii) The applicant No.3 is an employee of M/s Frontier Stone Crusher Unit and is engaged as a Supervisor in its Stone Crusher Unit at Siji Village, Likabali.

(iv) The applicant No.4 is the landowner of a plot of land where the Stone Crusher of M/s Frontier Stone Crusher Unit is located.

(v) The applicant No.5 is practicing as an Advocate in Aalo, Arunachal Pradesh.

(vi) And the informant Shri Iken Tao is also a partner of M/s Frontier Stone Crusher Unit, who had informed the Officer-in-Charge, Aalo Police Station, inter alia, that he had entered into a partnership with the applicant No.1 and the partnership deed was executed before the Executive Magistrate, Likabali on 27.11.2020, by fraudulently incorporating the words "or for 30 years from date of commencement of agreement" in Clause 2.1 of the said partnership deed, and the same was presented for registration before the Sub-Registrar(S&R), West Siang, Aalo, Arunachal Pradesh. It was further alleged that the applicant No.4 had impersonated him and submitting his Land Possession Certificate (LPC) as supporting documents had aided in the fraudulent registration of the said partnership deed.

4. Further, it is stated that the applicant No.5, who is a practicing Advocate and well known to the informant since childhood, had aided in registration of the said partnership deed. On the basis of the said information, Aalo P.S. Case No.49/2022, under Sections 468/471/34 of the IPC was registered and assigned G.R. Case No.103/2022. It is further submitted that the applicants categorically denied their involvement in the offence alleged and are sought to be unnecessarily harassed in connection with Aalo P.S. Case No.49/2022. The informant, being the proprietor of M/s Frontier Stone Crusher Unit had license for operating the Stone Crusher at Siji Village, Likabali and he was also desirous to enter into a partnership deed with the applicant No.1 and Khasi Ispat Pvt. Ltd. Accordingly, on 27.11.2020, a Deed of Partnership was executed before the Executive Magistrate, Likabali, Arunachal Pradesh and was presented for registration before the Sub-Registrar(S&R), Aalo, West Siang District, Arunachal Pradesh and assigned registration No.LD-15/21 dated 13.05.2021. After registration of the partnership deed a copies of the agreement was given to the applicants as well as to the informant, and hence, the informant is well aware of the contents of the said registered partnership deed. The informant was also provided a Hydraulic Excavator and 3(three) Tata Signa 2823 Dumpers for smooth supply of materials to the Stone Crusher. But the informant could not supply the requisite quantity of materials to the

Stone Crusher and also did not allow procuring of the materials from the third parties as well as blocked the approach road. Apart from that on 14.07.2021, the informant assaulted the staff of the Stone Crusher and threatened them with dire consequences and also destroyed assets of Stone Crusher. In the meantime the informant stopped supplying materials to the Stone Crusher and served a letter dated 22.06.2021, stating that the partnership business could continue only on revision of the rates of the supplied materials, otherwise he would withdraw his license from the partnership business. Thereafter, the applicant No.1 requested the informant to hand over the Excavator and three Dumpers but the informant refused to hand over the same and for which the applicant No.1 and Khasi Ispat Pvt. Ltd., had jointly filed the application under Section 9 of the Arbitration and Conciliation Act, 1996 in the Court of the learned Additional District Judge No.2, Kamrup(M), Guwahati for granting appropriate interim order. Accordingly, the learned Court passed the order dated 25.03.2022, directing the instant informant to hand over the excavator and three dumpers to the applicant No.1. But the informant did not hand over the said materials and disobeyed the order passed by the learned Additional District Judge No.2, Kamrup(M), Guwahati dated 25.03.2022.

5. The learned counsel for the applicants also submits that after registration of the partnership deed, a copy of the same was supplied to the informant and hence, he was fully aware of the words "or for 30 years from date of commencement of agreement" of Clause 2.1 of the partnership deed. Thus, the applicants states that when there is specific clause of rescinding the partnership business on mutual agreement, there is no point of fraudulently incorporating the words "or for 30 years from date of commencement of agreement" which are redundant, if the parties do not desire to continue the partnership business. Further, it is stated that there is no functional Treasury Office at Likabali in Lower Siang District for registration of documents and for which the partnership deed had to be registered before the Sub-Registrar (S&R), Aalo, Arunachal Pradesh after its execution on 27.11.2020 before the Executive Magistrate, Likabali. The applicant No.4 is no way connected with the business of M/s Frontier Stone Crusher Unit and he is only the landowner of a plot of land, where the Stone Crusher is located. Similarly, the applicant No.5 is practicing Advocate in Aalo, Arunachal Pradesh and hence, no way connected with the business of M/s Frontier Stone Crusher Unit and he merely rendered his professional services as an Advocate for registration of the partnership deed.

6. Further, it is also stated that the dispute was between the informant and the applicant No.1 and it is purely civil in nature but, the informant by alleging fraudulent incorporation of some words, has tried to give a colour of criminal offence against the present applicants. The police are in search of the applicants in connection with Aalo P.S. Case No.49/2022, and hence, due to

reasonable apprehension of being arrested on accusation of committing a non-bailable offence. Therefore, the applicants approached this Court with the present application seeking Anticipatory Bail. All the applicants are from respected families and have no criminal records and there are no chances of absconding or hampering or tempering of the evidences during the investigation of the case. Rather, they will extend their full corporation in the investigation of this case, if they are granted with the privilege of pre-arrest bail.

7. Mr. Choudhury, learned Additional A.G.-cum-Public Prosecutor for the State of Arunachal Pradesh submits that it reveals from the Case Diary that the applicants forged the documents i.e. the partnership deed by inserting the line "or for 30 years from date of commencement of agreement", which was fraudulently incorporated and has changed the nature and character of the agreement. He also submits that custodial interrogations of all the applicants are necessary and hence, it is not a fit case to extend the privilege of pre-arrest bail to the applicants. Further, it is also submitted that the notice was issued upon all the applicants under Section 41 A Cr.P.C., but only the applicant No.5 had appeared before the IO in response to the notice issued, and he confessed before the IO that "it is suspected that impersonate of Shri Iken Tao has been done by someone in registering the documents in Aalo, without their presence". Accordingly, the learned Additional A.G.-cum-Public Prosecutor submits that the custodial interrogation is very much essential in the present case for just and proper investigation.

8. Mr. L. Perme, learned counsel appearing on behalf of the informant submits that the informant has filed written objections against the Anticipatory Bail application. He also submits that the applicants had registered the forged partnership deed by incorporating the line "or for 30 years from date of commencement of agreement" in clause 2.1, which was registered before the Executive Magistrate by impersonating the informant before the Sub-Registrar, Aalo, Arunachal Pradesh and further, the applicant No.5 had identified the person who appeared as Shri Iken Tao, despite of the fact that the applicant No.5 is the schoolmate of the informant and he personally knows the informant. Further, instead of registering the deed in Lower Siang District, the applicants intentionally registered the documents in West Siang District only with a purpose to forge the documents. More so, they obtained interim relief order dated 25.03.2021 in Misc.(Arb) Case No.16/2022, producing the forged deed of agreement and obtained the order by misrepresenting the fact of the case.

9. After hearing the submission made by both the learned Advocates, I have perused the case Diary as well as the written objections filed by the informant of this case and accordingly, I find that there is sufficient materials collected by

the IO during investigation of this case. The informant side also furnished one copy of agreement where the line "or for 30 years from date of commencement of agreement" is missing in clause 2.1, which is alleged to have incorporated in the registered deed of partnership, executed by impersonating the informant. Further, it is seen that one interim relief order was also obtained by the applicant No.1 under Section 9 of the Arbitration and Conciliation Act, 1996 in Misc.(Arb.) Case No.16/2022, dated 25.03.2022, passed by the learned Additional District Judge, No.2, Kamrup(M), Guwahati and as per the informant the order has been obtained misrepresenting the fact and also producing the forged deed of partnership.

10. More so, the Case Diary reveals that under Section 41 A Cr.P.C. notices were issued upon all the applicants, but only the applicant No.5 had appeared before the IO to cooperate with the investigation of the present case and other applicants did not appear before the IO.

11. So considering the conduct of the applicants of this case as well as materials available on Case Diary and also considering the nature and gravity of offence, I find that custodial interrogation of the present applicants is necessary for the interest of proper investigation and hence, the present petition for Anticipatory Bail is hereby rejected.

12. In terms of above, the Anticipatory Bail stands disposed of.

6. After rejection of the aforesaid anticipatory bail application filed by the applicant and others, the instant pre-arrest bail application under Section 438 of the Cr.P.C. was filed by the present applicant on 21.12.2022, which came up for consideration on 22.12.2022, on which date, Case diary was called for, fixing 05.01.2023 as the next date of listing.

When the anticipatory bail application was listed on 05.01.2023, before the learned Judge, who had rejected the earlier anticipatory bail, being, AB No. 3015/2022, the learned Judge had passed an order to list it on 17.01.2023, before another Bench. When the matter was listed on 17.01.2023, this Court while granting the applicant, the privilege of interim pre-arrest bail, had observed that statement of the applicant is required to be gone through first before arriving at a final decision.

7. It is a settled proposition of law that once the anticipatory bail application has been rejected on merit, the subsequent anticipatory bail application can only be entertained if there is change of circumstances to take a different view other than the view taken in the previous bail application.

8. To indicate that after the earlier anticipatory bail application was rejected on 13.12.2022, there have been a change of circumstances, the learned counsel for the applicant has referred to paragraph-4 of the present anticipatory bail application, which is quoted hereinbelow:

4. That pursuant to the registration of the said FIR dated 14.09.2022 that a joint bail application under section 438 of Code of Criminal Procedure, 1973 being case No. AB/3015/2022 was filed and moved before the Principal Bench of Gauhati High Court at Guwahati which was listed on 13.12.2022. However, after hearing the learned counsel for the parties at some length the Hon'ble High Court at Principal Bench was please to dispose of the said bail application without extending the privilege of anticipatory bail to all the applicants. Be that as it may, the involvement of the applicant in commission of any offence as alleged in the said FIR dated 14.09.2022 was not properly incorporated consequently the rejection of the interim bail. Hence, this subsequent bail application is being filed independently of facts and on law as alleged in the FIR dated 14.09.2022 for that the applicant even remote as no role.

9. On perusal of paragraph-4 of the present anticipatory bail application, it is noticed that the applicant has stated that involvement of the applicant in commission of any offence alleged in the F.I.R., dated 14.09.2022, was not properly incorporated in the earlier anticipatory bail application because of which, the earlier anticipatory bail application was rejected by this Court.

10. On perusal of the order dated 13.12.2022, passed in earlier anticipatory bail application, being, AB No. 3015/2022, it transpires that the said anticipatory bail application was disposed of after perusal of the Case Diary produced and by making an elaborate discussion on the merit of the anticipatory bail application.

11. In that view of the matter, the contention of the applicant in the present application that the involvement of the present applicant in commission of any offence alleged in the F.I.R., dated 14.09.2022, was not properly incorporated resulting in the rejection of the earlier anticipatory bail filed being, AB No. 3015/2022, vide order dated 13.12.2022, can hardly be stated to be any change in circumstance after the order dated 13.12.2022, was passed in the earlier AB No. 3015/2022. It is a settled position of law that subsequent bail application can only be entertained if there is a change in the circumstances that existed when the earlier anticipatory bail application was considered to enable the Court to take a view other than the view taken in the earlier anticipatory bail application.

12. Since, there appears to be no change in circumstances after the earlier anticipatory bail, being, AB No. 3015/2022 was rejected by this Court, I am of the view that the applicant is not entitled to be granted the privilege of pre-arrest bail in connection with Aalo P.S. Case No. 49/2022, registered under Sections 468/471/34 IPC, 1860, when the earlier anticipatory bail application filed by the applicant, being, AB No. 3015/2022, have been rejected by this Court, vide order dated 13.12.2022, on an elaborate discussion on merit.

13. In view of the above, this anticipatory bail application is dismissed being devoid of merit.

14. Interim pre-arrest bail granted vide order dated 17.01.2023, accordingly, is hereby recalled.

JUDGE

Comparing Assistant