

GAHC010000622023



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

Case No. : Bail Appln./44/2023

ASHIF AHMED @ ASIF AHMED
S/O- ASHRAF AHMED,
R/O- CITIZAN LANE ,
FAKHRUDDIN ALI AHMED NAGAR,
SIX MILE, GUWAHATI,
P.S- DISPUR, DIST- KAMRUP(M), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM

Advocate for the Petitioner : MR SARFRAZ NAWAZ

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

09.02.2023.

Heard Mr. AM Bora, learned Senior Counsel, being assisted by Mr. S. Nawaz, learned counsel for the accused and also heard Mr. M. Phukan, the learned Public Prosecutor, Assam appearing for the State of Assam.

2. This second bail application, under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused, namely, Ashif Ahmed @ Asif Ahmed, who has been languishing in jail since 21.10.2022, in connection with the Vigilance P.S. Case No.04/2022, under Sections 120(B)/420/406/ 409/468/471 IPC, read with Sections 13(1)(a)/13(2) of the Prevention of Corruption Act, 1988, for granting bail.

3. It is to be noted here that the above noted case has been registered on the basis of one FIR lodged by one Mrinal Sarma, Dy. Superintendent of Police, CM's Special Vigilance Cell, Assam, Rupnagar, on 21.10.2022, to the effect that the Commissioner, Guwahati Municipal Corporation (GMC) has detected some irregularities and illegalities in execution of de-siltation works in the Guwahati Municipal Corporation, for which he directed to conduct an enquiry by Shri Pankaj Chakravarty, ACS, Joint Commissioner, GMC. During enquiry it was detected that one Firm, namely, M/S. Dinsan Global Venture Pvt. Limited, owned by one Mithu Agarwal, was engaged for hiring vehicles/machineries for carrying out the de-siltation works of channels/drainage by issuing work order dated 21.05.2022, for the period from 02.04.2022 to 26.05.2022. The said Firm submitted bill, dated 27.06.2022, for a sum of Rs. 2,21,64,700/, and enclosed weighbridge slips of M/s Steel Udyog, Guwahati, and log books along with the bills which were found to be forged the same were submitted with connivance of the GMC Officials. The Firm also submitted inflated bills to GMC showing supply of vehicles/machineries and the de-siltation work was carried out without following the terms and condition of the Tender Documents and payments were released without proper execution of works based on forged and fake documents.

4. Mr. AM Bora, learned Senior Counsel for the accused submits that this is the second bail application preferred by the accused after 55 days of rejection of the earlier application, vide order dated 16.12.2022, in B.A. No.3469/2022, and after submission of the charge sheet by the I.O. Mr. Bora further submits that though the accused has not been claiming parity with other co-accused, who have already been enlarged on bail, yet on the ground of length of detention and also in view of the submission of charge sheet by the I.O., this application is preferred. Mr. Bora also submits that he would not submit on merit of the case and that the accused is ready to face the trial and there is no chance of hampering investigation and tampering the witnesses, in view of submission of charge sheet by the I.O. and therefore, it is contended to allow the petition.

5. On the other hand, Mr. M. Phukan, learned P.P., Assam has vehemently opposed the bail petition and submits that he is one of the main culprit in the offence, who in collusion with the contractor, namely, Mithu Agarwal has defalcated huge amount of public money by hatching conspiracy with him and other officials of GMC and that the I.O. has collected sufficient incriminating materials against him and the offence are serious in nature and therefore, Mr. Phukan contended to dismiss the petition.

6. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record, received from the learned Court below.

7. It appears that after completion of the investigation, the I.O. has submitted charge sheet against the accused along with some other co-accused

to stand the trial under Sections 120(B)/420/406/409/468/471 IPC, read with Sections 13(1)(a)/13(2) of the Prevention of Corruption Act. It also appears that the accused was arrested on 21.10.2022 and since then he is languishing in jail hazoot. Further it appears that the I.O. has collected sufficient incriminating materials against the accused in support of the allegation made in the FIR and the same has duly been reflected in the charge sheet and he caused huge loss to the State exchequer.

8. Now let it be seen whether bail can be granted to the accused who is involved in the offence of such magnitude. It is to be noted here that while discussing the general principles for considering a bail plea, Hon'ble Supreme Court in the case in **Ram Govind Upadhyay vs. Sudarshan Singh and others**, reported in **(2002) 3 SCC 598**, has held that the grant of bail though involve exercise of discretionary power of the Court, such exercise of discretion has to be made in a judicious manner and not as a matter of course. The heinous nature of crime warrants more caution and there is greater chance of rejection of bail, though, however, dependent on the factual matrix of the matter. Referring to the case of **Prahlad Singh Bhati vs. NCT, Delhi**, reported in **(2001) 4 SCC 280**, the Hon'ble Supreme Court has further held as under:

(a) While granting bail, the court has to keep in mind not only the nature of accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations,

(b) Reasonable apprehension of the witnesses being tampered with or there having apprehension of there being threat for the complainant, should also weigh with the Court, in matter of grant of bail,

(c) While deciding it is not excepted to have the evidence establishing the guilt of the accused beyond reasonable doubt, but, there oath always to be a prima facie satisfaction to the Court in support of the charge, and

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of granting the bail and in the event of there being some doubt as to the genuineness of the prosecution in the

normal course of event, the accused is entitled to an order of bail.

9. In the case of **P. Chidambaram vs. Central Bureau of Investigation**, reported in **(2019) SCC Online SC 1380**, the Hon'ble Supreme Court has held as under:

“22. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:-

(i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;

(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;

(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;

(iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(v) larger interest of the public or the State and similar other considerations (vide [Prahlaad Singh Bhati v. NCT, Delhi and another](#) (2001) 4 SCC 280).

There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merit, the discretion is to be exercised judiciously and not in an arbitrary manner.”

10. In the case of **Y.S. Jagan Mohan Reddy vs. Central Bureau of Investigation**, reported in **(2013) 7 SCC 439**, the Hon'ble Supreme Court has held as under:

“34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.”

11. In the instant case, the offences are indisputably economic offences, wherein defalcation of huge amount of public money is involved. The accused has already been charge sheeted under Sections 120(B)/420/406/409/468/471

IPC, read with Sections 13(1)(a)/13(2) of the Prevention of Corruption Act, which are serious in nature, involving deep rooted planning and huge financial loss was caused to the State exchequer and he is one of the main culprit and played a pivotal role, in the entire offence.

12. Having regards to the enormity of the offence and the amount of public money involved in the offence and the loss, so caused to the State exchequer, and also bearing in mind the observation made by the Hon'ble Supreme Court in **Y.S. Jagan Mohan Reddy (supra)**, and in the larger public interest and the facts and circumstances, which are peculiar to the present accused, this Court is of the view that this is not a fit case where the privilege of bail can be granted to the accused. Accordingly the petition stands dismissed.

13. However, the learned Court below is directed to make an endeavour to complete the trial within earliest possible time, without being influenced by any of the observation made here-in-above, which is made only for the purpose of disposing of the present bail application, not on the merit of the case.

JUDGE

Comparing Assistant