

GAHC010006812023



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

**Case No. : Bail Appln./145/2023**

MITHU AGARWAL  
S/O SHRI OM PRAKASH AGARWAL  
R/O HOUSE NO. 10  
BYE LANE NO. 1  
BELTOLA COLLEGE ROAD  
P.O. AND P.S. BASISTHA  
GUWAHATI  
DIST. KAMRUP (METRO)  
ASSAM

VERSUS

THE STATE OF ASSAM  
REP. BY THE PP  
ASSAM

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Advocate for : MR. B K MAHAJAN  
Advocate for : PP  
ASSAM appearing for THE STATE OF ASSAM

**BEFORE**  
**HON'BLE MR. JUSTICE ROBIN PHUKAN**

O R D E R

09.02.2023.

Heard Mr. BK Mahajan, learned counsel for the accused and also heard Mr.

M. Phukan, the learned Public Prosecutor, Assam appearing for the State of Assam.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused, namely, Mithu Agarwal, who has been languishing in jail hazoot since 02.12.2022, 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. BK Mahajan, learned Counsel for the accused submits that the accused is languishing in jail since 02.12.2022, and that investigation of the case has already been completed and the I.O. has laid charge sheet before the learned Court below against the present accused 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 and now the case is pending for appearance of the accused. Mr. Mahajan further submits that in the charge sheet, the I.O. has cited as many as 47 witnesses and enclosed 138 letters and exhibits and it is unlikely that the trial will complete within a short period. Mr. Mahajan further submits that earlier the accused had preferred an anticipatory bail application before this Court under Section 438 CrPC and the same was dismissed. Thereafter he had preferred another application for anticipatory bail and during that period, he was arrested. Mr. Mahajan submits that the accused is ready to face trial and there is no chance of absconding as he is a family man and therefore, Mr. Mahajan contended to allow the accused to go on bail. In support of his submission, Mr. Mahajan has referred one decision of the Hon'ble Apex Court in **Dinubhai Boghabhai Solanki vs. State of Gujarat and others**, reported in **(2014) 4 SCC 626**.

5. On the other hand, Mr. M. Phukan, learned P.P., Assam has opposed the bail petition on the ground that the present accused is the king pin of the offence and the I.O. has collected sufficient incriminating materials against him including some forged weigh bill slips, fake seals and documents, which were recovered from his possession and he has conspired with the Sachchata Officer,

namely, Ashif Ahmed @ Asif Ahmed and the Executive Engineers of the Divisions and also submitted inflated bill to the GMC, showing supply of vehicles/machineries and defalcated huge amount of money 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 02.12.2022 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 being 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 [Prahlad 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 indisputedly economic offence 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 to stand the trial, which are indeed serious in nature, involving deep rooted planning, wherein huge financial loss was caused to the State exchequer and he is the kingpin of the entire offence. Though the investigation has already been completed and it is being assured by the learned counsel for the accused that there is no chance of absconding and also no chance of hampering investigation or tampering the witnesses and that he will appear before the learned Court below, yet it appears from the charge sheet that he was absconding since the date of registration of the FIR. In the larger public interest and because of the circumstances, discussed above which are peculiar to him, this Court is unable to record concurrence with the submission of learned Counsel for the accused that this is a fit case where the accused can be enlarged on bail.

12. I have also carefully gone through the case law referred by Mr. Mahajan, learned counsel for the accused and I find that the same would not come into his aid, as the same is restricted to its own fact, which is different from the facts and circumstances of the case in hand.

13. In the result, I find that this is not a fit case to grant the privilege of bail to the accused. Accordingly the petition stands dismissed.

14. 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**