

GAHC010032582023



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

Case No. : AB/481/2023

HABIBUR RAHMAN
S/O LATE ABDUL AZIZ
R/O VILL- MOHMARA
P.S. LAHORIGHAT
DIST. MORIGAON, ASSAM
PIN-782102

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR Z HUSSAIN

Advocate for the Respondent : PP, ASSAM

B E F O R E
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

04.04.2023

1. Heard Mr. Z. Hussain, learned counsel appearing for the petitioner as well as B.B. Gogoi, learned Addl. P.P. appearing for the State respondent.
2. The petitioner, namely, Habibur Rahman has filed this application under Section 438 Cr.P.C with prayer for pre-arrest bail as he is apprehending arrest in connection with Laharighat P.S. Case No. 33/2023, under Sections 420/409 IPC.
3. I have considered the submissions at the Bar with circumspection and I have perused the case diary.
4. An FIR was lodged against the petitioner by the Block Development Officer on the direction of the Chief Executive officer, Zila Parishad, Morigaon, on the matter of misappropriation of Government money in execution as per complaint that the petitioner Habibur Rahman was involved with misappropriation of Government money in execution against six schemes under the 14th Finance Commission grant at Borchala Gaon Panchayat and suspension order was issued by Commissioner of P & R.D., Assam. The petitioner was the G.P. Secretary of Borchala Gram Panchayat under Lahorighat Development Block, Morigaon. It is submitted on behalf of the petitioner that he is already under suspension and there is no scope of tampering of evidence or manipulation or interpolation of records. The petitioner is an elderly person, aged about 52 years and forwarding him to custody will not in any way help in the progress of investigation.

5. The learned Addl. P.P. has raised serious objection stating that there are incriminating materials against the petitioner in the case diary. A detailed report has been submitted by the complainant regarding the anomalies conducted by the petitioner and the funds misappropriated by him. Investigation may be adversely affected if the petitioner is insulated by an order of anticipatory bail.

6. I have scrutinised the FIR. There are indeed cogent materials in the case diary against the petitioner. The statement of the witnesses under section 161 Cr.P.C clearly reveals that the petitioner is complicit. However, I have considered the fact that the statements of several witnesses have been recorded. Investigation has progressed to a considerable extent. The petitioner is already under suspension and he has not joined duty. It cannot be ruled out that he may retain some essential documents as speculated by the prosecution, but the case diary reveals that as the petitioner is under suspension since 19.01.2023, the required documents may already have been retained by the Zila Parishad and P&R.D.

7. I have considered the age of the petitioner. The petitioner has pledged to co-operate with the investigation. He is a local resident and he does not appear to be a flight risk.

8. In view of my foregoing discussions, petition is allowed.

9. In the event of his arrest, the petitioner shall be enlarged on bail of Rs. 50,000/- with a suitable surety of like amount to the satisfaction of the arresting authority,

under the conditions that,

(i) the petitioner will not hamper or tamper with the evidence;

(ii) the petitioner will refrain from such activities with which he is alleged; and

(iii) the petitioner will co-operate with the investigation and the petitioner will appear before the I/O within 10(ten) days.

(iv) the petitioner will not leave the jurisdiction of the Court without prior permission till the completion of investigation as well as the trial.

Send back the case diary.

JUDGE

Comparing Assistant