

GAHC010039582023



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

Case No. : Bail Appln./616/2023

RAJKUMAR SAH
S/O LT. JAGANNATH SAH
R/O OLD MISSAMARI,P.S. OLD MISSAMARI,DIST. SONITPUR, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE PP, ASSAM

2:PAWAN PARIK
S/OKISANLAL PARIK
R/O RANGAPARA THAKURBARI ROAD
P.O. RANGAPARA
DIST. SONITPUR
ASSA

Advocate for the Petitioner : MR. K SARMA

Advocate for the Respondent : MR. P BORTHAKUR(ADDL.PP, ASSAM)

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT

Date : 28-06-2023

1. Heard Mr. K. Sarma, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for respondent No.1 and Mr. A. Ganguly, learned counsel

for respondent No. 2.

2. The petitioner Rajkumar Sah has filed this application u/s 439(2) Cr.PC. with prayer for cancellation of pre-arrest bail granted to the OP No. 2 Pawan Parik in connection with Missamari P.S. Case No. 76/2022 u/s 420/406/294/506 IPC corresponding to GR Case No. 1828/2022.

3. It is contended by the petitioner that he has entered into a partnership business with the OP No. 2, Sri Pawan Parik about 2 years ago. Due to some personal problems, the petitioner had to withdraw from the partnership business and as he could not continue with the business, the opposite-party was to repay Rs. 43 lacs (Rupees Forty-three Lacs) which he invested by borrowing money from different persons, but the OP No. 2 failed to return the amount despite of repeated requests by the petitioner.

4. This impelled the petitioner Rajkumar Sah to lodge an FIR with the police, and Missamari P.S. Case No. 76/2022 and the corresponding G.R. Case No. 1828/2022 was registered. The OP No.2 filed an application u/s 438 Cr.PC. before the learned Sessions Judge, Sonitpur with prayer for bail and vide order dated 04.01.2023, marked as Annexure-2, the OP No. 2 was granted bail and the learned Sessions Judge had observed while granting bail that the dispute between both the parties is of a civil nature.

5. It is submitted that even in a case of partnership if the aggrieved is cheated, a case u/s 420 exists against the aggrieved. The amount which was misappropriated by the OP No. 2 makes him liable u/s 406 IPC. It is not a rule that in a case of agreement or partnership the dispute has to be solely civil in nature despite the fact that a criminal act has been committed by the petitioner.

6. Per contra, the learned counsel for the Opposite-Party/Respondent No. 2 has submitted that there was no partnership business as alleged by the petitioner. A false FIR was lodged against him by the petitioner. There is no allegation of any attempt to win over the witnesses or to influence the witnesses. There is no instance of any violation of bail conditions rendering cancellation of bail. The IO has not moved any application on any ground for cancellation of bail. The petition ought to be dismissed in *limine*.

7. The FIR unfolds that as the partnership business between the petitioner and the OP No. 2 did not work out, the petitioner withdrew from the partnership business as he was facing some personal problem. The opposite-party returned some amount of money and some valuables but after a few days the OP No. 2 stopped contacting the petitioner and refused to return the amount of Rs. 43 lacs. The petitioner had borrowed an amount of Rs. 30 lacs from Sujan Dey of Missamari and an amount of Rs. 12 lacs from Sudipta Boruah of Tezpur and as the money had not been returned to him, he is unable to repay the money borrowed from his friends. The FIR was lodged on 15.12.2022 and the order of pre-arrest bail was passed on 04.01.2023.

8. The learned Sessions Judge has spelt out sound reasonings while granting bail to the respondent/OP No. 2. It is also contended that there is no allegation that the petitioner was induced by the respondent No. 2 to invest money and thereafter he was cheated. So no case u/s 420 IPC is made out. The sole allegation against the respondent No. 2/OP No. 2 is that he has not returned the money invested in the business by both the partners which may, subject to the evidence, make out an offence u/s 406 IPC.

9. I would like to reiterate that it has been observed by the Hon'ble Supreme Court in

Mitesh Kumar J Sah v. State of Karnataka & Others, reported in *AIR 2021 SCC 5298* that the Hon'ble Apex Court has deprecated and discouraged the tendency of filing cases of civil nature under the colour of criminal case.

10. The cancellation of bail has been prayed for, on the merits of the case. There is no allegation that bail conditions have been violated or witnesses have been threatened. The scanned copies of the Case Diary also reveal that investigation has progressed to a considerable extent. The statement of the respondent No. 2/opposite-party has also been recorded. There is also no allegation that the petitioner has not been co-operating with the investigation.

11. It is submitted by the learned counsel for respondent No. 2 as well as by the learned Addl. PP that this is not an appeal and no supervening circumstances have emerged for cancellation of bail. The respondents have relied on the decision of the Hon'ble Supreme Court in *Bhuri Bai v. State of Madhya Pradesh*, reported in *[2022] 10 S.C.R. 190*, wherein it has been observed that:-

“In our view, even if the High Court had its reservations in the order so passed by the Trial Court granting bail to the appellant, particularly when the fact of long absence of the appellant was not adverted to, it was yet required to be taken note of by the High Court that the power being exercised was not that of a regular appeal or revision but, it was that of cancellation of bail under [Section 439\(2\)](#) CrPC.

It remains trite that normally, very cogent and overwhelming circumstances or grounds are required to cancel the bail already granted. Ordinarily, unless a strong case based on any supervening event is made out, an order granting bail is not to be lightly interfered with under [Section 439\(2\)](#) CrPC.

It had not been the case of the prosecution that the appellant had misused the liberty or had comported herself in any manner in violation of the conditions imposed on her. We are impelled to observe that power of cancellation of bail should be exercised with extreme care and circumspection; and such cancellation cannot be ordered merely for any perceived indiscipline on the part of the accused before granting bail. In other words, the powers of cancellation of bail cannot be approached as if of disciplinary proceedings against the accused and in fact, in a case where bail has already been granted, its upsetting under [Section 439\(2\)](#) CrPC is envisaged only in such cases where

the liberty of the accused is going to be counteracting the requirements of a proper trial of the criminal case. In the matter of the present nature, in our view, over-expansion of the issue was not required only for one reason that a particular factor was not stated by the Trial Court in its order granting bail.

In totality of the circumstances, we are unable to approve the order impugned setting aside he bail granted to the appellant.”

12. In the instant case too, no supervening circumstances has emerged warranting cancellation of bail. The respondent/OP No. 2 has not violated bail conditions. The merits of the case is not taken into consideration at this stage. This petition is devoid of merits and the petition is dismissed. This order shall have no bearing on the merits of the case.

JUDGE

Comparing Assistant