

GAHC010048362023



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

Case No. : Bail Appln./784/2023

ASHIF AHMED @ ASIF AHMED
S/O ASHRAF AHMED R/O CITIZEN LANE F A AHMED NAGAR SIX MILE
GUWAHATI P.S DISPUR DIST. KAMRUP (M) ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR D TALUKDAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

30.03.2023.

Heard Mr. D. Talukdar, learned counsel for the accused and also heard Mr. M. Phukan, the learned Public Prosecutor, Assam appearing for the State of Assam.

2. This bail application filed for the third time, 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 hazoot 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 conditions of the Tender Documents and payments were released without proper execution of works based on forged and fake documents.

4. Mr. Talukdar, learned counsel for the accused submits that this is the third

bail application and the earlier two bail petitions i.e. (1) B.A. No.3469/2022 was dismissed on 16.12.2022 and (2) B.A. No.44/2023 was dismissed on 09.02.2023 were dismissed by this court after perusing the case diary. Mr. Talukdar further submits that this third application is being preferred on three grounds, namely, parity, period of detention and also due to ailment of the parents of the accused. Mr. Talukdar also submits that except one accused, namely, Mithu Agarwala all the co-accused have already been enlarged on bail and the present accused is also stands in the same footing. Mr. Talukdar further submits that the accused was arrested on 21.10.2022 and till date he has been languishing in jail hazoot for last 159 days, and that investigation has already been completed and charge sheet has been laid before the learned court below and now the case is pending for appearance of the accused persons, and as charge sheet has been laid here is no scope of hampering the investigation or tampering the witnesses and the accused is ready to participate in the trial. Further, referring to some medical documents, Mr. Talukdar submits that the parents of the accused are suffering from ailments and there is none to look after them except the accused and therefore it is contended to allow the petition.

5. On the other hand, opposing the petition, Mr. M. Phukan, learned P.P., Assam submits that the present accused is one of the main culprits of the offence, and defalcated huge amount of public money conspiring with one contractor, namely, Mithu Agarwal and other officials of GMC and the case has already been charge sheeted and now the case is pending for appearance, and that this court, considering all aspects, were pleased to dismiss the earlier application. Mr. Phukan further submits that if, considering the medical ground of the parents this court decided to consider his bail application then strict condition has to be imposed.

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

7. It is not in dispute 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 is also not in dispute that the accused was arrested on 21.10.2022, and since then he has been languishing in jail hazoot for last 159 days. 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. The charge sheet further reveals that as many as 47 witnesses have been cited in the charge sheet and since the trial is yet to be commenced there is no immediate prospect of conclusion of the same. In the case of **State of Kerala v. Raneef**, reported in **(2011) 1 SCC 784**, Hon'ble Supreme Court has held that in deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial.

8. Further, it appears that the parents of the accused are suffering from different ailments and the medical documents enclosed with the petition also supported the same and the learned P.P. also not disputed the genuineness of the same. It also appears that the father of the accused is suffering from prostatomegaly with median lobe compressing & protruding into the urinary

bladder base along with cystitis. It is being submitted that there is none to look after the parents except the accused.

9. Indisputably, the offences are serious in nature, wherein defalcation of huge amount of public money is involved and the same constitutes a class apart and need to be visited with a different approach in the matter of bail. But, as held in the case of **P. Chidambaram vs. Central Bureau of Investigation**, reported in **(2019) SCC Online SC 1380**, by the Hon'ble Supreme Court- 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. As provided in the case of **Y.S. Jagan Mohan Reddy vs. Central Bureau of Investigation**, reported in **(2013) 7 SCC 439**, 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.

10. As stated herein above, 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. Since charge sheet has already been submitted there is no scope of hampering the investigation and tampering the witnesses. However, a large number of witnesses have been cited in the charge sheet, and as trial has not yet commenced, there is no immediate

chance of conclusion of trial. Besides, as submitted by the Mr. Talukdar, the learned counsel for the accused, there is none to look after his ailing parents, who are suffering from different ailments. He is behind the bar for last 159 days. These are some of the changed circumstances in favour of the accused and the same are also peculiar to him, and this court see no grounds as to why these would not be sufficient/just ground to entertain this third bail application, which was considered almost after 48 days of rejection of the second bail application on 09.02.2023.

11. Having regards to above, specially to the medical condition of the parents of the accused, this court is inclined to allow this petition. And accordingly, the same stands allowed. It is provided that on furnishing a bond of Rs.1,00,000/ (Rupees one lacs) with two suitable surety of like amount to satisfaction of the learned Special Judge, Assam, the accused be enlarged on bail. The above privilege is however, subject, subject to following conditions:-

- (i) He shall surrender his Passport, if any, before the learned Special Judge, Assam forthwith.
- (ii) He shall not leave the jurisdiction of the learned Special Judge, Assam without prior permission.
- (iii) He shall not make any attempt to influence the witnesses either directly or indirectly.

JUDGE

Comparing Assistant