

GAHC010056252023



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

Case No. : AB/898/2023

MUKHYADHAR DAS
S/O- LT. DEBEN DAS, R/O- MAZGAON, HATBHONGA CHUBURI, TEZPUR
UNDER P.O. AND P.S. TEZPUR IN THE DISTRICT OF SONITPUR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY P.P., ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 28.03.2023

Heard Mr. G Choudhury, learned counsel for the petitioner as well as Mr. RJ Baruah, learned Additional Public Prosecutor, Assam for the State respondent.

2. By this petition under Section 438 of the Code of Criminal Procedure, 1973, the petitioner, namely, **Mukhydhar Das** has prayed for grant of pre- arrest bail apprehending arrest in connection with **ACB PS Case No.12/2023** under Section 120B of the Indian

Penal Code, 1860 read with Section 7 (a) of the Prevention of Corruption Act, 2018 (in short 'PC Act') (as amended in 2018).

3. The case diary is placed before the Court.

4. It may be mentioned that the present petitioner was granted the privilege of interim pre-arrest bail vide order, dated 16.03.2023.

5. Mr. G Choudhury, learned counsel for the petitioner, contends that in terms of the conditions of the interim pre-arrest bail, dated 16.03.2023, the petitioner appeared before the investigating officer and accordingly, the investigating officer has recorded his statement under Section 161 CrPC. Mr. Choudhury, therefore, contends that in view of the co-operation extended to the investigating agency, the petitioner's custodial interrogation is not warranted. Mr. Choudhury emphatically contends that the petitioner is not the main accused in the case and he has been roped into a false case. As such, Mr. Choudhury submits that no purpose will be served by his custodial interrogation.

6. *Per contra*, Mr. RJ Baruah, learned Additional Public Prosecutor, contends that the petitioner is named in the FIR and the case diary reveals that he, who is the Inspector of Food and Civil Supplies and Consumer Affairs, Jorhat, is the prime accused in the case. Mr. Baruah further contends that it is apparent from the case diary that the petitioner engaged one casual worker of the office to collect bribe money on his behalf and the said casual worker was caught red-handed while accepting bribe amount of Rs.5,000/- from the informant, which amount was tainted by the Trap-laying team of the A.C.B, Assam. Therefore, although the petitioner has given his statement under Section 161 CrPC, in terms of the interim pre-arrest bail, in view of the abundance of *prima facie* materials showing the petitioner's involvement in corruption in public office, his custodial interrogation is necessary in the backdrop of facts and circumstances and accordingly, his pre-arrest bail application may be rejected. In this context Mr. Baruah has drawn attention to the bail objection filed by the investigating Officer.

7. The First Information Report reveals the allegation that the informant who is a resident of Teok Boruah Gaon and owns a Cooperative Society namely, Teok Cooperative Society has the rule to collect fingerprints of all the consumers in the Digital Machine. Thereafter, for the

month of February, 2023, when she collected fingerprints of consumers in the Digital Machine, she came to know that fingerprints of only 99 numbers of consumers out of 117 were received. On 5th March, 2023, the present petitioner, who is the Inspector of Food and Civil Supplies and Consumer Affairs, Jorhat threatened her of dire consequences over phone and again on 6th March, 2023, the petitioner instructed her to talk with one Raktim, who in turn demanded Rs.6000/- from her. The informant recorded the conversation and requested the Directorate of Vigilance & Anti-Corruption to take legal action. Thereafter, the Trap-Laying team got to know that on instruction from the present petitioner, one Ranjan Saikia accepted a tainted bribe amount of Rs.5000/- from the informant and accordingly he was trapped.

8. It is noticed that by order, dated 16.03.2023, the petitioner was granted the privilege of interim pre-arrest bail so as to enable him to get his statement recorded under Section 161 CrPC. The aforesaid interim pre-arrest bail order reads as herein below extracted:

“16.03.2023

Heard Mr. G Choudhury, learned counsel for the petitioner. Also heard Mr. B Sharma, learned Addl. Public Prosecutor for the State/respondent.

Call for the case diary, fixing 28.03.2023.

Mr. G Choudhury, learned counsel for the petitioner submits that the petitioner who is an Inspector of FCS & CA in the office of the Deputy Commissioner, Jorhat has been roped into a false and fabricated case. Mr. Choudhury also submits that some members of the print media had conspired against him by publishing false news items in the local newspapers. Mr. Choudhury further submits that due to illness, the petitioner had obtained leave and presently undergoing medical treatment at Tezpur by staying at home. However, the officers of Vigilance Cell, Government of Assam have served a notice as required under Section 41 A of the CrPC thereby directing him to appear before the I.O. on 12.03.2023 at 10.30 am without indicating as to why he has been asked to appear in connection with the said case. Therefore, the petitioner has reasonable apprehension that he may likely to be arrested without any rhymes and reasons. Mr. Choudhury also submits that at least the privilege of interim pre-arrest bail may be granted to the petitioner so as to enable him to get his statement recorded by the I.O..

Mr. B Sharma, learned Addl.P.P has raised objection against grant of pre-arrest bail to the petitioner on the grounds cited in the anticipatory bail objection petition filed by the Superintendent of Police, Directorate of Vigilance and Anti Corruption, Assam addressed to the learned Public Prosecutor of this Court. Mr. Sharma further submits that the objection petition shows that petitioner is the prime accused in the said case and as such, if he is directed to be released on pre-arrest bail, it may likely to hamper the ongoing investigation of the Vigilance Department against corruption. .

*Considering the submissions of the parties, only in order to enable the petitioner to get his statement recorded, in the interim, it is provided that the petitioner, namely, **Mukhyadhar Das**, in connection with **ACB PS Case No. 12/2023** u/s 120B IPC r/w Section 7 (a) of the PC Act. shall be released on interim pre-arrest bail on furnishing bail bond of **Rs.50,000/-** with one surety of like amount to the satisfaction of the arresting authority, subject, of course, to the following conditions:*

- (i) That the petitioner shall appear before the Investigating Officer within 5 days, failing which, on the 6th day, the interim anticipatory bail order shall automatically expire;*
- (ii) That the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer; and*
- (iii) That the petitioner shall refrain from committing any such mistake/offence in future of which he suspected of commission.*

It is made clear that in no case the interim pre-arrest bail shall be extended further. “

9. A perusal of the case diary, it is, *inter alia, prima facie*, revealed that the petitioner, who is a 'public servant' as defined in Section 2 (C) of the PC Act, by virtue of being the Inspector of Food @ Civil Supplies and Consumer Affairs, Jorhat demanded illegal gratification for performing his official duty, as narrated in the FIR itself, from the informant, who is a lady having a Co-operative Society. The petitioner even *prima facie* engaged middle men in the office to collect illegal gratifications on his behalf for performing his official duties. One casual worker was caught red-handed by the Trap-laying team of the Vigilance and Anti-Corruption, Assam with tainted bribed money.

10. On scrutiny of the various statements of the witnesses, recorded under Sections 161 and 164 CrPC as well as the transcribed seized telephonic conversations reveal *prima facie* abundance of incriminating materials against the petitioner.

11. The investigation is yet to be completed and in the backdrop of facts and circumstances that emerged from the case diary, the petitioner's custodial interrogation is found necessary .

12. In this regard, the grounds of objection filed by the investigating officer are also relevant in order to carry forward a fair and smooth investigation into the instant case registered under the special statute of the PC Act.

13. In view of the above reasons, this Court is of the opinion that it is not a fit case to grant the privilege of pre-arrest bail to the petitioner.

14. Accordingly, the pre-arrest bail application stands rejected.

15. The interim pre-arrest bail granted to the petitioner vide order, dated 16.03.2023, stands vacated.

The pre-arrest bail application is disposed off.

JUDGE

Comparing Assistant