

GAHC010058912023



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

**Case No. : Bail Appln./1010/2023**

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 M ASSAM

VERSUS

THE STATE OF ASSAM  
REP. BY THE PP, ASSAM

**Advocate for the Petitioner : MR. D BORA**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**HONOURABLE MR. JUSTICE ROBIN PHUKAN**  
**ORDER**

**30.03.2023.**

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 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 conditions of the Tender Documents and payments were released without proper execution of works based on forged and fake documents.

**4.** Mr. B.K. Mahajan, learned Counsel for the accused submits that this second bail application is preferred on the ground of length of detention and also on the ground of sickness of parents and wife and children of the accused. Mr. Mahajan pointed out that the accused is languishing in jail hazoot for last 116 days since 02.12.2022, and the investigation 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 and now the case is pending for appearance of the accused. Mr. Mahajan further submits that as many as 47 witnesses are cited in the charge sheet, and it is unlikely that the trial will complete within a short period. Mr. Mahajan further submits that the accused is ready to face trial and there is no chance of absconding and therefore, Mr. Mahajan contended to allow the petition.

**5.** Whereas, Mr. M. Phukan, learned P.P., Assam has vehemently opposed the petition and submits that the accused is the mastermind of the offence and that no medical documents have been submitted to substantiate the ailments of the family members of the accused and the ground assigned for filing this second application has already been considered by this court in the first application and there arises no occasion for reconsideration of the same. Mr. Phukan also submitted that the I.O. has collected sufficient incriminating materials against him and conspiring with other co-accused he has 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.** It is to be mentioned here that subsequent to hearing, the accused has submitted an additional affidavit enclosing some medical documents of his parents.

**7.** 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 and the medical documents of the parents of the accused enclosed with the additional affidavit.

**8.** A cursory perusal of the medical documents of the parents of the accused it cannot be concluded that they are suffering from any major ailments requiring urgent medical attention. The other documents so enclosed with the petition are birth certificates and school report card of the sons of the accused and the same never suggest that they are suffering from any ailments. Not a single medical document is enclosed to suggest that the sons and wife of the accused is suffering from any ailments and as such the submission remained unsubstantiated. Rest of the ground has already attended by this court while disposing of the first bail application.

**9.** It is a fact that the accused was arrested on 02.12.2022, and since then he has been languishing in jail hazoot. Charge sheet has already been submitted after completion of investigation. But the said ground has already been considered by this court. No other ground, let alone an acceptable one, assigned to consider this second bail application. Moreover, it appears from the record that the accused was evading arrest at the time of investigation and after vigorous search he was arrested from a hideout outside the state. And from such conduct of the accused, satisfaction cannot be derived that he would not misuse the liberty, if the privilege of bail is extended to him.

**10.** Considering above and also considering the nature and gravity of the offence and the punishment provided for the same this court is of the view that the privilege of bail cannot be extended to the accused. Accordingly, the petition stands dismissed.

**11.** 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**