

GAHC010062102023



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

Case No. : AB/1047/2023

MD. BURHAN UDDIN
S/O LATE ATAR ALI
R/O VILL- DOLIBIL, P.S. RAMKRISHNA NAGAR,
IN THE DISTRICT OF KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR G CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

19.06.2023

Heard Mr. G. Choudhury, learned counsel for the petitioner and Mr. B. Sarma, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioner viz. Burhan Uddin has approached this Court seeking the benefit of pre-arrest bail,

apprehending his arrest, in connection with Ramkrishna Nagar Police Station Case no. 54/2022 registered under Section 409, Indian Penal Code [IPC] for the second occasion after rejection of his previous pre-arrest bail application, A.B. no. 2969/2022 by an order dated 28.11.2022, after perusal of the materials available in the case diary, produced by the learned Additional Public Prosecutor on that date.

3. The First Information Report [FIR] was lodged by the Chief Executive Officer, Karimganj Zilla Parishad on 26.04.2022, pursuant to 2 [two] Enquiry Reports, dated 17.02.2022 and 26.04.2022 respectively, regarding misappropriation of Government fund under 14th Finance Commission by one Sri Pradip Kumar Das, Assistant Statistical Officer, DRDA, Karimganj in his capacity as In-Charge Gaon Panchayat Secretary, Baruala Gaon Panchayat. As per the FIR, the Enquiry Officer's Reports were duly complemented by one field verification report of the In-Charge Executive Engineer, Karimganj Zilla Parishad.

4. While rejecting the petitioner's previous pre-arrest bail application, the Court after perusal of the materials in the case diary, had observed as under:-

4. The petitioner herein is the husband of one Najma Khatun, the President, Baruala Gaon Panchayat under Karimganj Zilla Parishad, District – Karimganj.

5. The contents of the Enquiry Report dated 17.02.2022 and the Enquiry Report dated 26.04.2022 go to indicate that 9 nos. of schemes were shown to be implemented through and under Baruala Gaon Panchayat under 19th Finance Commission. When inspections of the schemes were made, it was found that no work was carried out in respect of 8 nos. of works. In respect of the remaining work, only 40% of the work was done but entire amount was found withdrawn.

6. The materials in the case diary, collected during the course of investigation, go to indicate that Sri Pradip Kumar Das as the In-Charge Gaon Panchayat Secretary along with the petitioner by adopting an unauthorized modus operandi had withdrawn most of the money under the 14th Finance Commission against the schemes illegally

without undertaking any construction works. It is seen that the amounts were transferred to various accounts without undertaking any construction works. The witnesses in their statements have specifically implicated the petitioner.

5. Mr. Sarma, learned Additional Public Prosecutor has produced the concerned case diary and the materials in the case diary so produced, are perused.

6. The allegations in the FIR are misappropriation of amounts pertaining to 9 [nine] nos. of schemes which are reflected in the report of the Executive Engineer [I/C], Karimganj Zill Parishad. As per the said report, out of 9 [nine] schemes, indicated therein, shown to be executed under the 14th Finance Commission, it was found during the field verification that no work was executed in respect of 8 [eight] nos. of schemes out of the said 9 [nine] nos. of schemes. In respect of 1 [one] scheme, only 40% work was done but the entire amounts were withdrawn in respect of all the 9 [nine] nos. of schemes. From the statements of the witnesses including that of the Secretary of the Gaon Panchayat, it is noticed that in respect of 9 [nine] nos. of schemes, no work was done in respect of 8 [eight] nos. of schemes with one scheme partly executed. But, the amounts against 9 [nine] nos. of schemes were disbursed in three installments, that is, [i] the 1st installment of 25% on 22.02.2021; [ii] the 2nd installment of 25% on 26.02.2021; and [iii] 3rd installment of 50% on 27.06.2021. The entire money was transferred in three accounts of the Construction Committee wherefrom the payments were made to three vendors through cheques and the three vendors were the present petitioner and two other persons.

7. It is settled that after rejection of application for pre-arrest bail under Section 438, CrPC on merits, there is scope to file a subsequent bail application for pre-arrest bail only if there is a change in the fact situation or in law which requires earlier view being interfered with or where the earlier finding has become obsolete.

8. Having found ample incriminating materials implicating the present petitioner in connection with the alleged act of misappropriation in respect of those 9 [nine] nos. of

schemes under the 14th Finance Commission, this Court is of the considered view that there is no good and sufficient ground for re-consideration of the previous order dated 28.11.2022 passed in A.B. no. 2969/2022, to extend the benefit of pre-arrest bail under Section 438, CrPC to the petitioner. In such view of the matter, the instant pre-arrest bail application, preferred for the 2nd occasion, is found bereft of any merit and the same is accordingly rejected.

JUDGE

Comparing Assistant