

GAHC010078192023



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

Case No. : AB/1337/2023

MAMON BARUAH
D/O- LATE ABANI KANTA BARUAH, R/O- HOUSE NO. 113, BELTOLA
TRIPURA ROAD, P.O. BELTOLA, P.S. BASISTHA, GUWAHATI-781029, ASSAM

VERSUS

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

Advocate for the Petitioner : MR. D DAS SR. ADV,
Assisted by Mr. K. Mohammed.

Advocate for the Respondent : Mr. K. K. Das, Addl. P.P., ASSAM

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

ORDER

15.05.2023

Heard Mr. D. Das, learned Senior Advocate assisted by Mr. K. Mohammed, learned counsel for the applicant. Also heard Mr. K. K. Das, learned Additional Public Prosecutor for the State respondent.

2. This application is filed under Section 438 of the Code of Criminal Procedure, 1973, praying for grant of pre-arrest bail to the accused/applicant, who is apprehending arrest in connection with Khetri P.S. Case No.151/2020, dated 06.09.2020, registered under Sections 420/468 of the Indian Penal Code.

3. Case Diary has been received and I have perused the same.

4. It is submitted by the learned Senior Advocate for the applicant, Mr. D. Das, that after obtaining the order of interim pre-arrest bail, the applicant appeared before the IO and recorded her statement under Section 161 Cr.P.C. He also submits that her earlier bail prayer was rejected by this Court vide order dated 16.03.2023, considering the materials available in the case diary as well as the objection raised by the IO and also on account of preparing a fake land documents, i.e. the Power of Attorney & Sale Deed etc on her laptop by cheating the owner and buyer's of the land.

5. The present petition is filed on new ground that the subsequent FIR is not maintainable for the same cause of action. It is also submitted that on 10.08.2020 an FIR was lodged by the purchaser of the land measuring 6 Bighas by dag No.155, Patta No.50 in Sonapur, Tetelia Gaon. Subsequently, on 06.09.2020 another FIR was lodged by the owner of the land with the same allegation for the same plot of land. The name of the present petitioner was not mention in the FIR, but she has been named by the co-accused Nitul Das and accordingly, she was arrested in connection with the earlier FIR and was behind the bar for more than 50 days. Thereafter, she was released on bail vide order

dated 29.09.2022 in BA No. 2432/2022.

6. It is submitted that the name of the petitioner was uttered by the co-accused Nitul Das, only due to grudge of lodging two FIRs by the present petitioner on 04.02.2020 and 31.07.2020 before the Basistha Police Station. He also submitted that the present petitioner was behind the bar for more than 50 days in connection with the Khetri Police Station Case No.131/2020 under Sections 420/406/294/506/34 of the IPC, for the same cause of action and hence, further detention for the same act of incident is not at all necessary, rather it violates the Article 21 of the Constitution. However, the petitioner is ready and willing to co-operate in this investigation.

7. In support of his submission, he also relied on the decision of the Hon'ble Apex Court in ***Amitbhai Anilchandra Shah vs. Central Bureau of Investigation & Anr.***, reported in ***(2013) 6 SCC 348***, wherein, he mainly stressed in Para-37 of the said judgment, wherein, it has been held that "a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution."

8. The Paragraph-37 in the case of ***Amitbhai*** (*Supra*) read as under:-

"37) This Court has consistently laid down the law on the issue interpreting the Code, that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution. In T.T. Anthony (*supra*), this Court has categorically held that registration of second FIR (which is not a cross case) is violative of Article 21 of the Constitution. The following conclusion in paragraph Nos. 19, 20 and 27 of that judgment are relevant which read as under:

"19. The scheme of Cr.P.C is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 Cr.P.C on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 Cr.P.C, as the case may be, and forward his report to the Magistrate concerned under Section 173(2) Cr.P.C. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR; he is 35 Page 36 empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 Cr.P.C.

20. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 Cr.P.C. only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 Cr.P.C. Thus there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 Cr.P.C.

27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that sub-Section (8) of Section 173 Cr.P.C. empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narang case it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Cr.P.C. It would clearly be beyond the purview of Sections 154 and 156 Cr.P.C., nay, a case of abuse of the statutory power of investigation in a 36 Page 37 given case. In our view a

case of fresh investigation based on the second or successive FIRs, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 Cr.P.C or under Articles 226/227 of the Constitution.”

9. Accordingly, it is submitted by the learned Senior Advocate that from the two FIRs, it is very much evident that the dispute between the parties arose out of the same cause of action. The land in question is also the same, which is described in the FIRs itself.

10. The learned Senior Advocate further submits that the accused/petitioner was behind the bar for a considerable period and the IO got ample opportunity to interrogate the same, in connection with the earlier FIR. He also submitted that the IO had collected all the documentary evidence regarding this case. Hence, further custodial interrogation is not at all necessary here in this case. Rather, the subsequent FIR is not at all maintainable but it also violates the Article 21 of the Constitution of India. As the petitioner has already appeared before the IO and had co-operated with the same. Hence, her custodial interrogation is not at all necessary here in this case, even though, she is still willing to cooperate in the further investigation of this case, as and when her presence is required.

11. In this regard, Mr. K. K. Das, learned Additional Public Prosecutor submitted that there are 2(two) FIRs lodged against the present accused/petitioner, but the victims seems to be different. Also, from the case diary, it is revealed that the present accused/petitioner had used her laptop or

computer in making the forged documents, thus, she is very much involved in committing the crime of cheating of the victims.

12. More so, from the case diary, it is also found that the FSL report is yet to be received, and hence, the interrogation of the present petitioner may be required for just and fair investigation of the case.

13. After hearing the submissions made by the learned counsels of both sides, and also after perusing the case diary, it revealed that the earlier bail application was rejected by this Court, considering the incriminating materials available against the present accused/petitioner. However, the fact cannot be denied that two FIRs have been lodged with the same set of allegations. It is also the fact that the petitioner was already behind the bar for 50 days, in connection with earlier FIR, where the IO got sufficient time to interrogate and inquire the same. At the same time, it is also submitted that after the interim bail, she had appeared before the IO and cooperated in the investigation of this case.

14. Thus, in the present case the IO got the ample opportunity to collect the documentary evidence and also from the materials available in the Case Diary, it revealed that there is sufficient progress in the investigation of this case, though the report of FSL is yet to be collected by the IO.

15. So, considering the progress of the investigation as well as considering the view of the Hon'ble Apex Court and also considering the fact the present petitioner was earlier behind the bar for more than 50 days in connection with earlier FIR for the same cause of action, thus, I find that it is a fit case to

extend the privilege of pre-arrest bail to the accused/petitioner. Accordingly, the interim pre-arrest bail order, granted to the accused/petitioner vide order dated 25.04.2023, is hereby made absolute with a direction to the accused/petitioner to co-operate with the I.O. in further investigation of the case.

16. In terms of above, this anticipatory bail application stands disposed of.

17. The Case Diary be sent back.

JUDGE

Comparing Assistant