

GAHC010079972023



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

Case No. : Bail Appln./1565/2023

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 METOR 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
HON'BLE MR. JUSTICE ROBIN PHUKAN
ORDER

15.05.2023.

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, Mithu Agarwal, who has been languishing in jail hazoot

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 is the 3rd bail application preferred by the accused on the twin grounds of length of detention as well as ailments of his parents and wife of the accused and also of

the accused himself. Mr. Mahajan further submits that the earlier bail applications, being the BA No.145/2023, was dismissed by this Court vide order dated 09.02.2023, and BA No.1010/2023, was dismissed by this Court vide order dated 30.03.2023. Further, Mr. Mahajan submits that the accused was arrested on 02.12.2022, and after completion of the investigation, charge sheet has already been submitted on 11.01.2023, citing as many as 47 witnesses. Mr. Mahajan also submits that charges have not yet been framed against the accused persons and the case is pending at the stage of appearance of accused persons and there is no immediate prospect of conclusion of trial. Mr. Mahajan, further referring to some of the medical documents at page No.227 of the petition, submits that the father of the accused, namely, Om Prakash Agarwal, aged 78 years has been suffering from chest infection and arthritis and referring to the page No.240, one certificate issued by Dr. R.N. Sarma, Retd. Medical & Health Officer I of Nalbari submits that the mother of the accused has been suffering from hypertension and psychosis and referring to page No.242 and 252 of the petition, Mr. Mahajan submits that the wife of the accused is also suffering from ailment and two cysts have been found on her scalp, on the parietal region and she has been advised for surgery and that the petitioner is the only person to look after his aged and ailing parents and his ailing wife and in his absence, they are suffering a lot and the accused himself is suffering from ailments and a report was called for by this Court and therefore, it is contended to allow the petition.

5. On the other hand, Mr. M. Phukan, learned P.P., Assam appearing for the State respondent submits that this Court, in the earlier two applications has considered the merit of the case and dismissed the two bail applications, preferred by the accused and this third bail application is preferred on the

ground of illness of parents and wife of the accused. Mr. Mahajan further submits that the status report submitted by the Sessions Judge, Kamrup (M) at Guwahati reveals that charge has not yet been framed against the accused persons and the case is at the stage of appearance. However, Mr. Phukan has opposed the bail petition, as the grounds assigned for filing the present petition has already been considered by this Court in the earlier two applications and the medical ground is also considered by this Court in the second bail application.

6. 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 status report submitted by the learned Sessions Judge, Kamrup (M) at Guwahati and the report of Superintendent of Central Jail, Guwahati, as called for by this Court, in respect of the medical condition of the accused.

7. From the status report, it appears that the case has already been charge sheeted after completion of investigation and now the same is pending at the stage of appearance and charges have not yet been framed against the accused persons. Further, it appears that as many as 47 witnesses have been cited in the charge sheet and even if charges are framed, it will take a considerable time for the examination of 47 witnesses. Further, it appears that the accused was arrested on 02.12.2022 and since then, he has been languishing in jail hazoot and all the co-accused have already been enlarged on bail by this Court on medical ground etc.

8. From the medical documents placed on record, it appears that the father,

mother and wife of the accused have been suffering from different ailments requiring proper treatment and care and it is submitted that except the accused, there is none to look after them. The medical documents have not been disputed by the respondent State. The report of the Superintendent of Central Jail, Guwahati reveals that the accused is also suffering from different ailments and undergoing check up at Gauhati Medical College Hospital.

9. Having considered the medical condition of the parents and wife of the accused and also of the accused, and further considering the fact that there is no possibility of immediate conclusion of trial, this Court is inclined to allow this petition. And accordingly, it is provided that on furnishing a bond of Rs.2,00,000/- (Rupees two lakhs) with one surety of like amount, to the satisfaction of the learned Court below, the accused shall be enlarged on bail. It is further provided that the learned Court below will be at liberty to impose any condition on bail, so to ensure his presence in the Court during trial.

10. In terms of above, this bail petition stands disposed of.

JUDGE

Comparing Assistant