

GAHC010086922023



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

Case No. : AB/1469/2023

MUKHYADHAR DAS
S/O- LATE 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 MRIDUL KUMAR KALITA

ORDER

02.08.2023

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

By this second petition under Section 438 of the Code of Criminal

Procedure, 1973, the petitioner, namely, *Mukhyadhar Das* has approached this Court for grant of pre-arrest bail, who is apprehending arrest in connection with ACB P.S. Case No.12/2023 under Section 120B of the Indian Penal Code, 1860 read with Section 7(a) of the Prevention of Corruption Act, 1988.

The first anticipatory bail application filed by the present petitioner, i.e., AB No. 898/2023, was dismissed, by order dated 28.03.2023 passed in AB No. 898/2023, by a co-ordinate Bench of this Court, on merit, after perusal of the case diary.

It is also pertinent to mention herein that during the pendency of the earlier anticipatory bail application, the petitioner was granted interim pre-arrest bail by order dated 16.03.2023, however, same was later on cancelled.

The accusation in this case is that on 10.08.2023, one Smt. Prarthana Barua had lodged an FIR before the Superintendent of Police, Directorate of Vigilance & Anti-Corruption, Assam, *inter-alia*, alleging that the present petitioner and one Computer Operator of the Officer of Food and Civil Supplies, Jorhat, demanded illegal gratification from the first informant and on receipt of the said FIR, ACB PS Case No.12/2023 was registered.

Learned counsel for the petitioner has submitted that he has filed this instant second anticipatory bail application, mainly on following grounds, namely, that the present petitioner, Mukhyadhar Das is suffering from Type-II diabetes and in support of his submission he has furnished medical documents including the prescription issued by the Doctor of Kanaklata Civil Hospital, which shows that the present petitioner is suffering from Type-II, diabetes.

The second ground taken by the present petitioner is that in the meanwhile, the Secretary to the Government of Assam, Food and Civil Supplies and Consumer Affairs Department, on 28.03.2023 had issued a show cause

notice to the present petitioner and has placed him under suspension and it is submitted by the learned counsel for the petitioner that if the petitioner is detained in connection with instant case, he may not be able to give proper reply to the show cause notice issued against him and may not properly defend the proposed departmental proceeding which is contemplated against him by the Food and Civil Supplies and Consumer Affairs Department.

Learned counsel for the petitioner has also stated that in the meanwhile the Secretary to the Government, Food and Civil Supplies and Consumer Affairs Department on 21.07.2023 has published the show cause in the newspaper which shows the pre-conceived mala fide intention of the department against the present petitioner and under said circumstances, it is submitted that unless the petitioner is allowed to remain on bail, he may not get fair chance to defend the contemplated departmental proceeding against him and would be jeopardized.

It is also submitted that the present petitioner while he was on interim anticipatory bail had co-operated with the Investigating Officer and his statements were also recorded and therefore, his custodial detention may not be necessary.

Learned counsel for the petitioner has also submitted that the present has himself not taken any illegal gratification from the informant or anybody and he has been falsely implicated. Learned counsel for the petitioner has relied on the ruling of Hon'ble Supreme Court in ***Neeraj Dutta vs State(Govt. of N.C.T. of Delhi)*** reported in ***2023 SCC on line 280***, wherein and Hon'ble Supreme Court has observed that the presumption of facts with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a Court of law by way an inference only when the foundational facts have been proved

by relevant oral and documentary evidence and not in absence thereof.

On the other hand, learned Additional Public Prosecutor has submitted that there are incriminating materials against the present petitioner in the case diary which does not justify grant of anticipatory bail to the present petitioner, more so when his previous anticipatory bail was rejected on merit by a Co-ordinate Bench of this Court.

It is also submitted by the learned Additional Public Petitioner though the petitioner had appeared before the Investigating Officer of ACB PS Case No.12/2023 in pursuant to the direction in the earlier anticipatory bail application; however, he was not co-operative with the Investigating Officer and gave evasive replies to the Investigating Officer.

It is also submitted that the present petitioner is a prime accused and the mastermind of the offence alleged in the FIR against him and his custodial detention is necessary considering the materials available in the case diary. Hence, the grant of anticipatory bail, on his second application, has been vehemently opposed by the learned Additional Public Prosecutor.

I have considered the submission made by the learned counsel for the both sides as well as perused the materials available on record including the case diary of ACB PS Case No.12/2023, which was requisitioned in connection with the instant case.

On perusal of the order dated 28.03.2023, it appears that the co-ordinate Bench of this Court while rejecting the first anticipatory bail application has considered various aspects of the case in hand, which for the sake of brevity, this Court is refraining from repeating again. The co-ordinate Bench, while rejecting the first anticipatory bail application of the present petitioner has also come to the finding that the custodial interrogation of the petitioner is

necessary.

On perusal of the incriminating material available against the present petitioner in the case diary, this Court is unable to come to a different finding than that which was arrived at by the Co-ordinate Bench of this Court while rejecting the earlier bail application.

The ruling of the Hon'ble Supreme Court of India which has been cited by the learned counsel for the present petitioner is applicable only when the case is in trial stage where Court after considering the evidence adduced during the trial comes to a final conclusion, however, the present case is still at investigation stage and there are incriminating materials against the present petitioner in the case diary.

As regards the ailment of the accused is concerned, there is nothing on record to show that the petitioner was diagnosed with the Type-II diabetes only after rejection of the earlier anticipatory bail application on 28.03.2023. Be that as it may, considering the nature of the ailment with which the petitioner is suffering i.e. Type-II diabetes and considering the serious nature of allegation leveled against the present petitioner and the materials available against the present petitioner, this Court is of the considered opinion that merely because the petitioner is suffering from Type-II diabetes which is a clinically manageable ailment with medication, same is not in itself is a good ground, under the facts and circumstances of the present case, to entitle the petitioner to get a favourable order under section 438 Cr.P.C. Regarding the submission of learned counsel for the petitioner that the department of Food and Civil Supplies and Consumer Affairs have issued a show cause notice and published the same in the newspaper and is contemplating initiation of department proceeding also, under the facts and circumstances of the present case and considering the allegations

leveled against the present petitioner, does not appear to be a good ground for re-consideration of the prayer for anticipatory bail application when his first anticipatory bail application was rejected on merit by the co-ordinate Bench of this Court observing that the petitioner's custodial detention is found necessary.

For reasons mentioned herein above, this Court finds it difficult to come to a different conclusion which was arrived at by the co-ordinate Bench of this court while rejecting the first anticipatory bail.

Hence, the application filed by the petitioner under section 438 Cr.P.C. for the second time is hereby rejected.

Send back the case diary.

JUDGE

Comparing Assistant