

GAHC010126742023



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

Case No. : Bail Appln./2042/2023

PRADIP SAIKIA
S/O LATE HARESWAR SAIKIA
R/O VILL- NAHARKOTIA
MORAN ROAD,
P.S. NAKARKOTIA, IN THE DISTRICT OF DIBRUGARH, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE LEARNED PP, ASSAM

Advocate for the Petitioner : A W AMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 06.07.2023

- 1.** Heard Mr. S. Nawaz, learned counsel for the petitioner, also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State.
- 2.** This is an application under Section 439 of the Code of Criminal Procedure, 1973 filed by the petitioner, namely, *Pradip Saikia*, who is behind the bar since

15.05.2023 in connection with Hatigaon P.S. Case No. 178/2023 under sections 120B/370 of the Indian Penal Code read with section 19 of the Transplantation of Human Organs and Tissues Act, 1994 (herein referred to "TOHO Act, 1994").

3. The accusation against the present petitioner in this case is that on 08.05.2023, the Superintendent of Gauhati Medical College & Hospital lodged an FIR before the Officer-in-Charge of Bhangagarh Police Station, *inter alia*, alleging that "M/s Sanskaran Health and Services" was running a racket for supply of kidneys for gullible guardians since long. As the subject-matter of the allegation leveled in the FIR falls within the jurisdiction of Hatigaon Police Station same was transferred to Hatigaon Police Station which on receipt of the said FIR registered as Hatigaon P.S. Case No. 178/2023.

4. The learned counsel for the petitioner submits that the petitioner is the Chief Executive Officer in "M/s Sanskaran Health and Services" and they used to provide medical services including overall medical package contracts with patients of cancer, organ transplant etc.

5. The learned counsel for the petitioner has submitted that the patient-Rishav Parashar, whose name is mentioned in the FIR was a client of "M/s Sanskaran Health and Services" regarding his kidney transplant at a fees of Rs.24,00,000/- (Rupees Twenty Four Lakhs) only which was paid for arranging transportation for the said Rishav Parashar, his father and all hospital expenses at Rabindranath Tagore International Institute of Cardiac Sciences, Kolkata including the cost of surgery and diagnostics, accommodation and food expenses etc.

6. Learned counsel for the petitioner has also submitted that the "M/s Sanskaran Health and Services" had followed all the procedural formalities as

required under the TOHO Act, 1994. It is also submitted by the learned counsel for the petitioner that in the event of any breach of any condition constituting an offence under section 19 of the TOHO Act, 1994, the appropriate authority to investigate the said offence is the appropriate authority designated under Section 13 of the said Act.

7. The learned counsel for the petitioner has also cited a ruling of Hon'ble Supreme Court of India in "**Jeewan Kumar Raut and Another –Vs- Central Bureau of Investigation**" reported in "**(2009) 7 SCC 526**", and of High Court of Madras in "**Dr. Ganesan –Vs- State and Others**" passed in Crl. O.P. No. 17336/2013 on 18.02.2015, as well as ruling of Odisha High Court in "**Mrs. N. Ratnakumari –Vs- State of Odisha and Others**" reported in "**2014 SCC Online Ori 256**" wherein it has been held that for breach of any provision of TOHO Act, 1994, FIR cannot be entertained and Police officials are not authorized to investigate a case relating to the breach of any provisions of TOHO Act, 1994 and only a complaint petition is maintainable and the said complaint petition is to be made by the Appropriate Authority or any officer authorized in that behalf either by the Central Government or the State Government or by the Appropriate Authority. However, in the instant case, it appears that the investigation was initiated on the basis of the FIR registered by Hatigaon Police Station and investigated by Police.

8. On the other hand, learned Additional Public Prosecutor submits that investigation is going on and the present petitioner acted as service provider to the patient whose kidney was transplanted.

9. I have perused the case diary.

10. It appears from the case diary that the Investigating Officer has already

recorded the statement of the present petitioner under Section 161 of the Cr.P.C. The petitioner is languishing behind the bars since last 52 days.

11. Considering the submissions made by learned counsel for the petitioner as well as learned Additional Public Prosecutor and also considering the materials in the case diary, the period of detention already undergone by the petitioner, the law stated by the Supreme Court as well as other Courts in this regard, further custodial detention of the petitioner does not appear to be necessary.

12. In view of the above, the petitioner, namely, *Pradip Saikia*, is allowed to be released on bail of Rs.30,000/- (Rupees Thirty Thousand) with one surety of like amount to the satisfaction of the learned Chief Judicial Magistrate, Kamrup(M).

13. With the above observations, this bail application is accordingly disposed of.

14. Send back the case diary.

JUDGE

Comparing Assistant