

GAHC010128712023



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

Case No. : AB/2149/2023

KAMRUL HUSSAIN
S/O LATE FAIJUR RAHMAN
R/O VILL- KANUWAMARI, P.O. MOWAMARI, P.S. SAMAGURI
DIST. NAGAON, ASSAM
PIN-782140

VERSUS

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

Advocate for the Petitioner : ALHAJJ I UDDIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

19.07.2023

Heard Mr. A.I. Uddin, learned counsel for the petitioner. Also heard Mr. K.K. Das, learned Additional Public Prosecutor, appearing for the State of Assam.

This is an application under section 438 of the Code of Criminal Procedure,

1973 praying for grant of pre-arrest bail of the petitioner, namely, Kamrul Hussain in connection with BI (EO) P.S. Case No. 12/2023 under section 120(B)/420/406 of the Indian Penal Code read with section 7 of the Essential Commodities Act, 1955.

The accusation in this case is that on 29.04.2023, one Dilip Kumar Deka lodged an FIR before the Officer-In-Charge of BI (EO) Police Station, *inter-alia*, alleging that the secretaries and other officials of M/S Mowamari GPSS Ltd, were involved in criminal breach of trust and criminal conspiracy to embezzle subsidized NFSA rice with common intention of personal gain. On receipt of the said FIR, BI (EO) P.S. Case No. 12/2023 was registered.

Learned counsel for the petitioner submits that the petitioner is the former secretary of M/S Mowamari GPSS Ltd, and he has resigned from the secretary ship on 13.08.2022. He also submits that he is innocent and in no way involved in the offence alleged in the FIR. However, as he was the former secretary of the Mowamari Gaon Panchayat Samabay Samittee, he is apprehending his arrest in connection with the instant case.

Learned counsel for the petitioner has also submitted that the present Chairman of the said GPSSociety namely, Md. Nazrul Islam and the present Secretary of the said Samabay Samittee Mr. Abu Taleb were already granted bail by this Court, one Nazir Uddin, who is salesman connected with the said Samabay Samittee has also been granted anticipatory bail by this Court and in view of the said facts, the present petitioner prays for allowing him to be released on anticipatory bail.

On the other hand, learned Additional Public Prosecutor, opposes the grant of bail of the present petitioner on the ground that there are incriminating materials against the present petitioner and though the present petitioner is a

former secretary, however, he was serving there as secretary for four months during the tenure which is under investigation in the instant case.

Learned Additional Public Prosecutor, submits that there are incriminating materials against the present petitioner.

I have considered the submissions made by both the sides and perused the materials on record including the case diary. Though learned Additional Public Prosecutor submits that that there are incriminating materials against the present petitioner in the case diary, however, considering the fact that the investigation of the case has substantially progressed as well as considering the fact that other three co-accused, of whom two are the president and the secretary of the said Samabay Samittee, are allowed to go on bail by this Court, custodial detention of the present petitioner does not appear to be necessary if he otherwise co-operates with the Investigating Officer of investigation of BI (EO) P.S. Case No. 12/2023.

In view of above, the present petitioner namely, Kamrul Hussain is hereby directed to appear before the Investigating Officer of BI (EO) P.S. Case No. 12/2023 within a period of 10(ten) days from the date of this order and co-operate with the Investigating Officer of the said case. If he does so within the stipulated period of time, in the event of his arrest in connection with BI (EO) P.S. Case No. 12/2023, he shall be allowed to go on interim bail of Rs. 50,000/- with a suitable surety of like amount to the satisfaction of the arresting authority with the following conditions:- (i) he shall co-operate with the Investigating Officer of BI (EO) P.S. Case No. 12/2023, (ii) he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to Court or to any police officer or tamper with the evidence. He shall not, in any manner,

try to overawe or influence or intimidate the prosecution witness.

With the above observation, this anticipatory bail application is hereby disposed of.

JUDGE

Comparing Assistant