

GAHC010153192023



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

Case No. : AB/2455/2023

ABDUS SOBUR AHMED
S/O BISHA SHEIKH
VILL- BARBHITA
P.S. KALGACHIA
DIST. BARPETA, ASSAM
PIN-781321

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 15.12.2023

Heard Mr. H.R.A. Choudhury, learned senior counsel, assisted by Mr. A.M. Ahmed, learned counsel for the petitioner. Also heard Mr. R.J. Baruah, learned APP appearing for the State, Mr. A.A.R. Karim, learned counsel for the

one set of 5 (five) objectors and Mr. A.K. Azad, learned counsel for another set of 8 (eight) objectors.

2. It may be mentioned that the 2 (two) set of objectors have projected themselves to be the dealers of fair price shop and they are to collect the food articles including NFSA rice from the Dakshin Titapani GPSS Ltd. at village-Barbhita under P.S. Kagachia in the district of Barpeta.

3. By this application under section 438 Cr.P.C., the petitioner, who is the Secretary of the said GPSS, is seeking pre-arrest bail in connection with Kalgachia P.S. Case No. 100/2023, under Sections 420/406/409 IPC.

4. The learned APP has produced the case diary and has opposed the prayer for bail on the ground that the petitioner is the Secretary of the said Dakshin Titapani GPSS Ltd. and though 1539.70 quintal of NFSA rice was lifted by the said GPSS for flood victims for the month of July, 2023 only 399.46 quintal of rice in 807 bags was found available during inspection, which was recovered and seized. Accordingly, the petitioner is accused of violating the provisions of Assam Public Distribution of Articles Order, 1982; terms of the sale license; and the provisions of Targeted Public Distribution System (Control) Order, 2015 and thus, had misappropriated 1140.29 quintals of subsidized NFSA rice. The learned counsel for the objectors have estimated the value the misappropriated rice at about 35 lakh rupees. It is submitted that investigation is at the nascent stage and that the I/O is collecting information with regard to the misappropriated rice.

5. Both the set of objectors have projected before the Court that they have not received the allotted rice for the month of July, 2023 and therefore, the beneficiaries could not be distributed the subsidized rice. It is also submitted

that in connection with the bail application, the petitioner has annexed a copy of sale register and the copies of the bills/cash memo of distribution of rice, which is available at pages 18 to 76 as well as 85 to 107 of the additional affidavit filed by the petitioner on 14.08.2023, but the objectors have claimed that they had appeared before the I/O and they have submitted that their signatures towards receipt of rice, as contained in the said bills are all forged.

6. Accordingly, the learned APP has submitted that the evidence is being collected by the I/O, which is likely to take some more time.

7. In support of the application for bail, the learned senior counsel for the petitioner has submitted that he has produced all the relevant documents before the concerned authorities to the Inspector of Food and Civil Supplies and Consumer Affairs Department as well as before the I/O and that as per their record, out of total 1539.70 quintals of rice lifted for the month of July, 2023, the petitioner's society had distributed 1069.10 quintals of rice to the various agents and that 470.60 quintals of rice is still lying in the godown of the society. It is further submitted that after being granted interim bail by order dated 19.07.2023, the petitioner has appeared before the I/O and has cooperated with the investigation. Accordingly, it is submitted that the petitioner has not violated any of the conditions for grant of interim bail and therefore, it is prayed that the interim bail granted to the petitioner be made absolute.

8. Perused the case diary and also perused the bail application, additional affidavit filed by the petitioner, additional affidavit filed by 5 (five) dealers filed on 14.08.2023, affidavit filed by 8 (eight) dealers on 07.09.2023.

9. It appears from the case diary that only 399.46 quintals of rice was seized, but as per the statement made by the petitioner in paragraph-4 of the

bail application, 470.60 quintals of rice is lying in the godown and therefore, there is a shortfall of about 70 quintals of rice seized from the petitioner.

10. From the documents, which are available in the case diary, it appears that the I/O has not been able to collect all the relevant documents and reconcile them with the proof of distribution to the various agents and therefore, the Court is inclined to admit that the investigation is at the nascent stage.

11. It appears from the objection filed by the two set of objectors that the petitioner is an accused in two similar nature cases. One of such case is registered as Kalgachia P.S. Case No. 478/2018, corresponding to G.R. Case No. 2911/2018 registered under Sections 379/411 of the IPC, read with Section 7 of the Essential Commodities Act, for which the petitioner had applied for bail, which was registered as AB 2324/2018. The other case against the petitioner is registered as B.I.(E.O.) P.S. Case No. 14/2021, under Sections 120B/420/406 IPC read with Section 7 of the Essential Commodities Act. The said bail application of the petitioner was registered as AB 2347/2021.

12. From the same, it appears that the petitioner is a habitual offender insofar as the distribution of subsidized food articles is concerned. The objectors came before this Court to file their objections claiming that they have not been provided with the NFSA rice for the month of July, 2023 and it is their projection that they have made complaints before the competent authorities for non-receipt of their allotted rice and forgery of their respective signatures.

13. Therefore, as there are materials available to show that the petitioner, being the Secretary of the Dakshin Titapani GPSS Ltd. has not distributed rice to at least two sets of objectors, who have appeared before this Court to raise

objection against bail.

14. Therefore, notwithstanding that after interim bail being granted, the petitioner had appeared before the I/O, but non-distribution of subsidized food articles to persons for whom those are intended is a serious offence which adversely affects the poorest class of the society, who are depending of subsidized food for their survival.

15. Therefore, in view of the discussions above, taking note of objections by the two sets of dealers, and in the interest of investigation, the Court is disinclined to extend the benefit of pre-arrest bail to the petitioner, namely, Abdus Sobur Ahmed at this nascent stage of investigation.

16. Accordingly, the pre-arrest bail application stands dismissed and the interim pre-arrest bail granted to the petitioner by order dated 19.07.2023 stands vacated.

17. Let the case diary be returned back.

JUDGE

Comparing Assistant