

GAHC010158092023



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

Case No. : AB/2470/2023

RANJIT PEGU
S/O SRI GHANAKANTA PEGU
R/O VILL- OPAR KHAMAN
MATMARA GAON

P.O. KHERKATA
P.S. DHAKUAKHANA
DIST. LAKHIMPUR
ASSAM
PIN CODE- 787005

VERSUS

THE STATE OF ASSAM
REP. BY THE PP
ASSAM

Advocate for : MR. N N B CHOUDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

01.09.2023

Heard Mr. N.N.B. Chodhury, learned counsel for the applicant and
Ms. A. Begum, learned Addl. P.P. for the State respondent.

2. Apprehending arrest in connection with **Dhakuakhana PS Case No. 89/2023**, under Sections 407/34 of the IPC, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by accused/applicant, namely, **Sri Ranjit Pegu** for grant of pre-arrest bail.

3. The said case was registered on the basis of an FIR lodged by Kabindra Medak, Inspector, FCS & CA, Dhakuakhan, on 28.06.2023. The essence of allegations made in the FIR is that the President and the Secretary of Pub-Dhakuakhana GPSS Ltd. namely, Bhabesh Doley and Ranjit Pegu have withdrawn 1002.50 qtls of NFSA rice from the FCI godown, for the month of June, 2023 and misappropriated the same without distributing amongst the beneficiaries NFSA under the aforesaid GPSS.

4. Mr. Choudhury, learned counsel for the applicant submits that pursuant to the order of this court dated 21.07.2023, the applicant appeared before the IO and his statement is recorded he has been co-operating with the Investigating Agency. Mr. Choudhury further submits that the applicant is innocent and no way involved with the offence alleged in the FIR and referring to the documents placed on record Mr. Choudhury submits that the applicant has no excess to the key of the godown of the Pub-Dhokuakhana GPSS and that he has been suffering from fever and cough and that he is ready to cooperate with the investigating agency and therefore, contended to make the interim order, dated 21.07.2023, absolute in the same terms and conditions.

5. On the other Ms. Begum, learned Addl. P.P. has produced the case diary before this court and by referring to the statement of the different witnesses examined by the IO, she submits that the materials collected so far reveals complicity of the applicant with the offence alleged in the FIR and that no much headway could be achieved in respect of recovery of the

misappropriated rice and that custodial interrogation is required in the interest of investigation and therefore, it is contended to dismiss the petition.

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 Case Diary with the assistance of learned Additional Public Prosecutor.

7. It appears that pursuant to the order dated 04.08.2023, the applicant had appeared before the IO and he has been cooperating with the investigating agency, but the case diary reveals that the IO has collected sufficient materials in respect of the allegation made in the FIR. Further it appears that the president and the secretary of Pub-Dhakuakhana GPSS have withdrawn 1009.25 qtls of rice allotted to the Pub-Dhakuakhana GPSS for the month of June, 2023 and the same has been misappropriated by the applicant with the President. It also appears that the Secretary and the President have also lifted 1002.50 qtls of rice for the month of July, 2023 and distributed the same amongst the agents being the quota for the June, 2023. It also appears that the investigation is still going on and no much headway could be made in recovering the aforesaid misappropriated rice, which is meant for the beneficiaries.

8. Having regards to above and also having heard the submission of learned counsel for both the parties and also considering the facts and circumstances on the record and the nature of accusation and the punishment prescribed for the same, this court is of the view that this is not a fit case for making the interim order dated 21.07.2023, absolute, inasmuch as his custodial interrogation seems to be indispensable, as no headway could be made in recovering the misappropriated rice.

9. It is to be noted here that while dealing with the requirement of custodial interrogation, Hon'ble Supreme Court in the Case of **State Represented by CBI vs. Anil Sharma**, reported in **[1997] 7 SCC 187**, held as under :-

“We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favorable order under [Section 438](#) if the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulted by a pre-arrest bail during the time he interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in task of disinterring offences would not conduct themselves as offenders.”

10. Keeping in mind the aforesaid observation made by Hon'ble Supreme Court in the case of **Anil Sharma [Supra]**, if we examine the present facts and circumstances and also in the light of the submission so advanced by learned counsel for both the parties, this Court is of the view that custodial interrogation is required for eliciting the information regarding misappropriation of 1009.25 qtls of rice allotted for the month of June, 2023.

11. Accordingly, this Court is of the considered opinion that this is not a fit case, where the privilege of pre-arrest bail can be granted to the applicant and accordingly, this AB stands dismissed.

12. The case diary be returned.

JUDGE

Comparing Assistant