

GAHC010165052023



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

Case No. : AB/2646/2023

BINOD BORAH
S/O LATE DEVICHARAN BORAH, R/O MORAN NATUNNAGAR, P.O.-
DIKHARI MORANHAT, P.S.-MORANHAT, DIST-DIBRUGARH, ASSAM, PIN-
785675

VERSUS

UNION OF INDIA
REPRESENTED BY THE GENERAL MANAGER (GM), NORTH EAST
FRONTIER RAILWAYS, MALIGAON, GUWAHATI-781011

Advocate for the Petitioner : MR. A K BHATTACHARYYA

Advocate for the Respondent : DY.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 29.08.2023

Heard Mr. A.K. Bhattacharyya, learned Senior Counsel for the petitioner. Also heard Mr. K.K. Parasar, learned CGC appearing for the respondent.

By this petition under Section 438 Cr.P.C., the petitioner, namely, **Binod Borah** has prayed for granting pre-arrest bail, apprehending arrest in connection with **RPF/POST/SLGR Case No.01/2023** under Section 3(a) of the Railway Property (Unlawful

Possession) Act, 1966.

It may be mentioned herein that vide order, dated 02.08.2023, the petitioner was granted the privilege of interim- pre –arrest bail by this Court.

Mr. A.K. Bhattacharyya, learned Senior Counsel appearing for the petitioner, submits that the investigating officer lodged another case based on the same bundle of allegations made in the present case, where a co-ordinate bench granted the privilege of pre-arrest bail to the petitioner vide order, dated 23.08.2023, passed in AB No. 2486/2023. Mr. Bhattacharyya, learned Senior Counsel, has also drawn attention to paragraph No.8 of the petition, which focuses on the arrangement made for financial management at Moranhat Railway station.

Per contra, Mr. K.K. Parasar, learned Standing Counsel for the respondent/ Railway while admitting filing of a second case on the same bundle of allegations submits that although the petitioner has given his statement under Section 161 CrPC, the petitioner has withheld material information relating to the allegation of misappropriation of Rs.2,12,95,042/- during the months of September, 2021 to 19th March, 2023. Mr. Parashar, therefore, submits that the privilege of interim pre-arrest bail granted to the petitioner may not be made absolute.

Perused the order, dated 23.08.2023, passed in AB N0.2486/2023.

A perusal of the case record reveals that there are allegations and counter-allegations regarding misappropriation of the revenue earned at Moranhat Railway Station, but no *prima facie* specific and convincing clear incriminating material has been revealed against the petitioner from the evidence so far collected by the investigating officer, till date. The aforesaid *prima facie* finding is, of course, subject to final outcome in investigation, which is presently at its nascent stage.

Therefore, the interim pre-arrest bail granted vide order, dated 02.08.2023 is hereby made absolute, subject to the following conditions-

- (i) That the petitioner shall co-operate in investigation as and when required;
- (ii) The petitioner shall not leave the State of Assam without prior written

permission of the investigating officer;

- (iii) That the petitioner 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 him from disclosing such facts to the Court or to any police officer; and
- (iv) That the petitioner shall refrain from committing any such offence in future.

Return the case diary.

Breach of any of the above conditions shall render cancellation of the instant pre-arrest bail order in accordance with law.

This disposes of the anticipatory bail application.

JUDGE

Comparing Assistant