

GAHC010168202023



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

Case No. : AB/2692/2023

NILAMONI BAISHYA
S/O LT. HAR DUTTA BAISHYA, VILL- BISHNUPUR, HAJO (NEAR NEW FISH
MARKET), P.O. AND P.S.-HAJO, DIST- KAMRUP, ASSAM, PIN-781102

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MD. H BHUYAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

12.09.2023

Heard Mr. H. Bhuyan, learned counsel for the applicant and Ms. N. Das, learned Addl. P.P. for the State respondent.

2. Apprehending arrest in connection with **Hajo PS Case No. 476/2023**, under sections 120[B]/406/420 of the IPC, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by applicant, namely, **Nilamoni Baishya** for grant of pre-arrest bail.

3. The said case was registered on the basis of an FIR lodged by one Dhiren Kalita, on 05.07.2023. The essence of allegations made in the FIR is that the applicant by promising to appoint 6 nos. of candidates in Grade-III post of APDCL, took a sum of Rs. 38,00,000/- after demanding a sum of Rs. 42,00,000/- and he also took another sum of Rs. 36,00,000/- to appoint 20 nos. of candidate in Grade-IV post of Water Resources Department of Government of Assam, after demanding a sum of Rs. 75,00,000/-. But, later on he could not materialize his promise and when he was asked to return the sum he had taken, then he had returned a sum of Rs. 3,83,000/- only to the informant and he failed to return the remaining amounts to the informant.

4. Mr. Bhuyan, learned counsel for the applicant submits that pursuant to the order of this court dated 04.08.2022, the applicant had appeared before the IO and his statement is recorded he has been co-operating with the Investigating Agency and, therefore, it is contended to make the interim order, dated 04.08.2023, absolute in the same terms and conditions.

5. On the other Ms. Das, learned Addl. P.P. by producing the case diary before this court, submits that the IO has collected sufficient incriminating materials against the applicant and that he had appeared before the IO, but he has not been cooperating with the investigating agency. Ms. Das further submits that the Officer In-Charge of Hajo PS, vide his letter dated 29.08.2023, has communicated the same to her and in order to recovery of the misappropriated sum, the custodial interrogation of the applicant is necessary herein this case 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 as well as the documents placed on record and also perused the Case Diary with the assistance of learned Additional

Public Prosecutor and also perused the letter of the Officer In-Charge of Hajo PS, dated 29.08.2023.

7. It appears that the applicant had appeared before the IO, but he has not been cooperating with the investigating agency and no headway could be achieved in respect of recovery of the misappropriated sum. Further, it appears from the case diary that the IO has received sufficient incriminating materials against the applicant and seized the photographs of accepting the money by the applicant from the informant.

8. 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 insulated 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.”

9. Having regard 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, this Court is of the view that custodial interrogation of the applicant seems to be indispensable in the interest of investigation of this case and accordingly, the petition stands dismissed and the interim order dated 04.08.2023, stands vacated and the applicant shall

surrender before the IO forthwith.

9. In terms of above this AB stands disposed of.

10. The case diary be returned.

JUDGE

Comparing Assistant