

GAHC010172812023



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

Case No. : AB/2771/2023

LILAWATI BORO
D/O- LATE MOLAN CH. BORO, R/O- VILL. AND P.O. BARBIL, P.S.
THELAMARA, DIST. SONITPUR, PIN- 784149.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. M SARANIA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

10.08.2023

Heard Mr. M. Sarania, learned counsel appearing for the petitioner. Also heard Mr. M. Phukan, learned Public Prosecutor, Assam appearing for the State respondent.

This petition under Section 438 Cr.P.C., is filed for granting the privilege of pre-arrest bail to the petitioner, namely, **Miss Lilawati Boro** apprehending her arrest in connection with **Vigilance P.S. Case No. 04/2023** registered u/s

120(b)/420/406/409 of the IPC read with Section 13(1)(a)/13(2) of Prevention of Corruption Act.

The Case diary, as called for, is placed before the Court.

Mr. M. Sarania, learned counsel for the petitioner, submits that the petitioner is the Secretary of M/S Naharbari S. S. Limited, which is attached with M/S Bongaon S.S. Ltd and she has been repeatedly called by the investigating officer in connection with the case for interrogation, for which she is apprehending arrest on a false accusation. Mr. Sarania emphatically submits that there was no shortage of supply of NFSA rice to M/S Naharbari S. S. Ltd. Rather surplus supply of rice by way of advance supply till August, 2023 weighing 798.144 quintals. Therefore, no question of misappropriation of government supplied NFSA rice may arise. Further, Mr. Sarania submits that the petitioner was absolutely innocent and she being not a public servant, Sections 13(1)(a)/13(2) of P.C. Act are not applicable to her.

Opposing the petition, Mr. Phukan, learned Public Prosecutor, fairly submits that the investigation reveals that the petitioner admitted to have excess NFSA rice in the godown of the Naharbari GPSS Ltd. Transported by arrested accused and thereby deprived the beneficiaries of the PDS rice and thus, attempted to misappropriate the same.

The prosecution case, in brief, is that on 22.06.2023, one Durlav Nath, General Secretary, All Sonitpur District Fair Price Shop Dealers Association lodged an F.I.R. before the Chief Minister of Assam, alleging that 2418.20 quintals of rice was allotted against 10173 ration card holders of 25051 persons under Dhekiajuli Constituency under Pradhan Mantri Garib Kalyan Yojana for the months of June and July, 2023 relating to Dhekiajuli town and Majibari Samabai Samiti. But, instead of distributing the allotted rice amongst the ration card holders the Secretary and other officials of the Society sold the same at high rate and thereby

misappropriated Rs.2 crores.

A perusal of the case diary, it is, *inter alia* revealed that the investigation although progressed covering the material aspects of the allegations, the transactions so far alleged prima facie do not bind the petitioner to the offences of criminal breach of trust or misappropriation of the NFSA rice. This presumption is, however, subject to final outcome in investigation. None of the beneficiaries has complained of deprivation of their due benefits till now and no recovery of rice has been made from her possession. The petitioner, who is a lady, appears to have been co-operating with the investigating officer. Therefore, this Court is of the opinion that if the liberty of pre-arrest bail is granted to the petitioner, the ongoing investigation is unlikely to be adversely affected.

Accordingly, it is provided that in the event of arrest, the petitioner, named above, shall be released on pre-arrest bail, in connection with the above noted case on furnishing bail bond of **Rs. 50,000/-** with one local surety of like amount to the satisfaction of the arresting authority, subject, of course, to the following conditions:

- (i) That the petitioner shall appear before the Investigating Officer within 7 days; failing which on and from the 8th day, the pre-arrest bail order shall automatically come to end
- (ii) 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 her from disclosing such facts to the Police Officer or the Court.

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

Return the case diary.

This disposes off the anticipatory bail application.

JUDGE

Comparing Assistant