

GAHC010191212023



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

Case No. : AB/2973/2023

NILAM MEDHI
R/O BAHARIO, SATRA
P.S. TARABARI
P.O. NIJ BOHORI
DIST. BARPETA, ASSAM
PIN-781302

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS. T SOM

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 16.10.2023

Heard Mr. R.P. Sarmah, learned Senior counsel assisted by Ms. T. Som, learned counsel for the petitioner. Also heard Mr. D. Das, learned Senior counsel assisted by Mr. I. Bhuyan, learned counsel for the respondent No. 2. and Mr. M. Phukan, learned Public Prosecutor for the State/respondent No. 1.

2. This is an application filed under **Section 438 Cr.P.C.**, praying for pre-arrest bail by the petitioner, namely, **Nilam Medhi**, in connection with **Hatigaon P.S. Case No. 264/2023**, registered under Section **406/419/420 IPC**.

3. The background of the case is that on 09.08.2023, the informant Aditya Harlalka representing Hudson Foods Private Limited lodged an FIR at Electronic Complex Police Station in Kolkata. The company is dealing with poultry feeds with its head office in Kolkata and a branch in Guwahati. It is alleged in the FIR that one Mr. Nilank Kashyap who had been introduced to the company five years prior requested to represent them in the North East States. He also recommended Mrs. Dipshika Choudhury as a consultant for the region. The company's business process involved procuring orders in Guwahati and dispatching goods from their manufacturing plant in Jalpaiguri to a godown in Sonapur, Guwahati. Mr. Kashyap placed orders for commodities on various occasions. However, a stockpile of 89.90 MT of poultry feed in the Sonapur godown meant to be sold by 23.06.2023 raised suspicion when no invoices or payments were received. The informant suspected foul play leading to a surprise visit on 24.06.2023 during which they discovered the complete absence of their products in the godown. Both Mr. Nilank Kashyap and Dipshika Chaudhary were also missing. One Mr. Baban Pathak, the employee responsible for stock receipt, could not explain the missing stock. After contacting the petitioner, he refused to cooperate, claiming the goods were sold but he would provide details after receiving payment despite waiting and providing opportunities for repayment. Mr. Kashyap failed to return the money and ceased communication. It became evident that Mr. Nilank

Kashyap and Dipshika Chaudhary had breached trust and stolen goods from the godown. Additionally, the consignment notes constantly bore the stamp of Shonali Foods and Feeds Pvt. Ltd. indicating complicity of theft and unauthorized sales of the product.

4. It is also alleged in the FIR that Mr. Nilank Kashyap was using a vehicle of the company for personal purposes without authorization and fails to return it despite repeated requests. The other person i.e. Baban Pathak was also found to be involved in the case. Subsequently, the FIR was lodged and accordingly a case was registered vide Hatigaon P.S. Case No. 264/2023 under Section 406/419/420 IPC.

5. It is submitted by learned Senior counsel for the petitioner that the name of present petitioner i.e. Nilam Medhi has nowhere been found in the FIR and interim pre-arrest bail was granted to the petitioner by this Court on the basis of the fact that his name was not mentioned in the FIR to be involved in the case. It is further submitted by learned Senior counsel for the petitioner that as the petitioner is no way connected with the alleged offence, the interim pre-arrest bail granted to the petitioner be made absolute.

6. In support of his submissions, the learned Senior counsel for the petitioner has placed reliance the following case laws-

(i) Sudipta Sen vs. Abhijit Deb Roy & Ors., reported in 2007 (2) GLT 182.

(ii) Gurbaksh Singh Sibbia Etc v. The State of Punjab, reported in AIR 1980 SC 1632.

(iii) Satender Kumar Antil vs. Central Bureau of Investigation & Anr., reported in AIR 2022 SC 3386.

7. Against the prayer of the petitioner, the informant has filed an objection stating that the informant is the vice president of Hudson Foods Private Limited. The informant has lodged an FIR before the Hatigaon police station against some officials and consultants of Hudson Foods Private Limited Guwahati office namely, Nilank Kashyap, Baban Pathak, Dipshikha Choudhury and others. It is stated in the objection that on several days Mr. Nilank Kashyap, till 23.06.2023 communicated order of different poultry commodities, the goods so transported from the factory of the company to Guwahati, were stocked at the company godown at Sonapur and were supposed to be sold immediately to the customers against whom the orders were booked by the Guwahati office. The stocks were received in the godown by one of the employees of the Gowahati office, namely Baban Pathak who certified that stock 89.90 MT poultry feed are stocked in the godown which were supposed to be sold on or before 23.06.2023. However, when the informant visited the godown for a physical check, he was surprised to find that there was no stock available in the godown in Sonapur, although the accused Baban Pathak himself certified that the stocks were received by him. There was no request from the Guwahati office for issue of invoice to the customers and there was neither any indication of payment against the same.

8. On being enquired, Sri Baban Pathak could not state anything about the whereabouts of the stock. On persistent query, he stated that the goods were received and sold in the market by Nilank Kashyap and

Dipshikha Choudhury and the sale proceeds have been adjusted by them in the account of another company, namely, Sonali Foods and Feeds Private Limited. The informant was surprised and shocked to hear this and thereafter to verify the same, cross checked with the transporter at Guwahati, where he found that the goods were received in the name of Sonali Foods and Feeds Private Limited, with which the accused, Sudarshan Mehdi, is closely linked. Accordingly, the FIR was lodged by the informant.

9. It is submitted by Mr. D. Das, representing the respondent No. 2 that the accused Baban Pathak and Sudarshan Madhi have been arrested during the course of investigation and accused Nilam Medhi and Dipshikha Choudhury have been able to obtain interim pre-arrest bail from this court. As per the records available with company, all the four accused persons namely Baban Pathak, Sudarshan Medhi, Nilank Kashyap and Dipshikha Choudhury were jointly and severally misappropriated 113.40 MT of poultry feed thereby causing loss of more than three crores, out of which a huge amount of payment has been diverted to the accounts of Sonali Foods and Feeds Private Limited.

10. According to learned Senior counsel, one of the accused namely Dipshikha Choudhury is the director of Sonali Foods and Feeds Private Limited and Nilank Kashyap is the promoter of the said company.

11. It is also the submission of learned Senior counsel that the petitioner Nilam Medhi has made false averments in his bail application before this Court, in as much as, he tried to project that he and Nilank Kashyap are two different persons. In fact, Nilam Medhi and Nilank Kashyap is one and

the same person. The arrested accused Sudarsan Medhi and Baban Pathak disclosed before the police while their statements were recorded that Nilank Kashyap and Nilam Medhi is one and the same person. It is also stated that Baban Pathak was engaged by Nilam Medhi @ Nilank Kashyap in Hudson Foods Private Limited, Guwahati branch at Sonapur godown as godown in-charge. It is further submitted by the learned Senior counsel that the interim bail granted to the petitioner shall not be made absolute.

12. The learned Public Prosecutor for the State Mr. M. Phukan has vehemently opposed in granting pre-arrest bail to the petitioner by stating that the petitioner misled the Court by projecting himself as Nilam Medhi whose name is not in the FIR. But the arrested accused Sudarsan Medhi who is the own brother of the present petitioner, disclosed before the police that the Nilam Medhi and Nilank Kashyap is one and the same person. The other arrested accused Baban Pathak also stated so.

13. The learned Public Prosecutor has pointed out that the I/O has issued a notice under Section 41 (A) Cr.P.C. to Nilam Medhi @ Nilank Kashyap on 17.09.2023 directing him to appear before the I/O on 19.09.2023 but the petitioner has not complied with the order. It is also submitted that in order to conceal his actual identity, the petitioner, Nilam Medhi has not disclosed the name of his father in the cause title as well as the bail application filed by him.

14. According to learned Public Prosecutor, if the interim pre-arrest bail of the accused petitioner is made absolute, the stolen goods cannot be recovered at all and the company would suffer irreparable loss and there is every possibility that the accused petitioner may flee away and also

cause disappearance of evidence. As such, the interim pre-arrest bail granted to the accused/petitioner may not be made absolute at this stage of investigation.

15. I have considered the submissions of learned counsel for the parties. I have also perused the case diary including the statement of the witnesses recorded under section 161 Cr.P.C. and the documents available thereon.

16. On perusal of case diary, it reveals that Nilam Medhi and Nilank Kashyap is one and the same person. It also appears that while filing a petition under section 438 Cr.P.C., the petitioner did not mention the name of his father. On being asked by this Court, Mr. R.P. Sarma, the learned Senior counsel for the petitioner admitted that Pramod Medhi is the father of the present petitioner. From the case diary, it also reveals that father's name of Nilank Kashyap is Pramod Medhi. It transpires that Nilank Kashyap and Nilam Medhi is one and the same person.

17. From the statement of Sudarsan Medhi who is the younger brother of Nilam Medhi and Baban Pathak, it is clear that Nilam Medhi and Nilank Kashyap is one and the same person. Regarding involvement of the accused Nilam Medhi @ Nilank Kashyap, the I/O has collected sufficient incriminating materials against him to be involved in the alleged offence.

18. It can be said that in cancelling the interim bail, the Hon'ble Supreme Court has given the guidelines in the judgment of ***Daulat Ram v. State of Haryana***, reported in ***(1995) v.1 SCC 349***. Legal position in this regard is stated, briefly. Criteria for cancellation of bail already granted

are entirely different than the criteria for refusal of bail. Grant of bail in a non bailable offence is discretion of a court but this discretionary jurisdiction is to be exercised in judicious manner by applying sound judicial principles, which by now are well settled. Court can refuse bail in non bailable offences if in the opinion of the court a case for granting bail is not made out, having regard to the factors, which are well laid down and need not be stated here.

19. It would be apt to refer to an observation of the Supreme Court in ***Siddharam Satlingappa Mhetre v. State of Maharashtra and ors.*** reported in **(2010) 8 Supreme 353** which is reproduced as under-

"The society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely sanctity of individual liberty and the interest of the society. The Law of bails dovetails two conflicting interests namely on the one hand, the requirement of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand absolute adherence of the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty."

20. Law as regards, cancellation of bail is now well settled. In **Daulat Ram's** case (supra), the Supreme Court has considered the factors to be taken into consideration while ordering cancellation of bail and has held:

"....Rejection of bail in a non bailable case at the initial stage and the

cancellation of bail already granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the ground for cancellation of bail, broadly (illustrative and no exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the Court, on the basis of material placed on the record or the possibility of the accused absconding is yet another reason justifying the cancellation of bail".

21. In view of the above, it reveals that the interim pre-arrest bail was granted to the petitioner on misconception of facts that the name of the petitioner has not been reflected in the FIR. Learned Senior counsel for the petitioner obtained the interim order by misleading the Court which is definitely a ground for vacation/cancellation of interim order. It also appears from case diary that the petitioner has not cooperated with the investigation. In spite of receipt of Section 41(A) notice, the petitioner did not appear before the I/O without showing any ground.

22. Accordingly, the interim pre-arrest bail granted to the petitioner vide order dated 29.08.2023 stands vacated/cancelled.

23. The bail application stands disposed of.

24. Send back the case diary.

JUDGE

Comparing Assistant