

GAHC010193362023



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

Case No. : AB/3007/2023

AMAN GUHA
S/O SRI MAHESWAR GUHA
R/O NEPALI PATTY, P.O. AND P.S. TEZPUR, DIST. SONITPUR, ASSAM-784001.

VERSUS

THE STATE OF ASSAM
THROUGH THE PP, ASSAM

Advocate for the Petitioner : MR. A GANGULY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

20.12.2023

Heard Mr. A. Ganguly, learned counsel for the petitioner and Mr. P.S. Lahkar, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioner viz. Aman Guha has approached this Court seeking the benefit of pre-arrest bail,

apprehending his arrest, in connection with Tezpur Police Station Case no. 2343/2020 [G.R. Case no. 3789/2020] registered under Sections 420/409/468/120B /403/34, Indian Penal Code [IPC], for the second occasion after rejection of his earlier pre-arrest bail application, AB no. 71/2021 by an order dated 02.08.2021, after perusal of the materials in the case diary produced on that day.

3. As the contents of the concerned First Information Report [FIR] lodged in connection with Tezpur Police Station Case no. 2245/2020 were aptly reflected in the Order dated 02.08.3021, the same is extracted hereinbelow :-

The First Information Report [FIR] has been instituted by the informant, Deepu Choudhury on behalf of Ujjivan Small Finance Bank Ltd. [‘the Bank’, for short] on 07.12.2020. In the FIR, it is mentioned that the petitioner was a Customer Relationship Officer at the Tezpur Branch office of the Bank and he resigned from the Bank on 03.01.2020. During his tenure, the petitioner was entrusted with the job of identifying and sourcing Group loan customers, to collect the amounts of the loan installments from the customers on the scheduled repayment dates and thereafter, to deposit the amounts at the Bank on the same day. One customer of the Bank viz. Smti Sunita Kumari Rai, on 29.10.2020, approached the branch complaining that she had lodged an FIR against the petitioner alleging misappropriation of money by him and the same has been registered as Tezpur Police Station Case no. 363/2020 under Sections 420/406, IPC. Having been alerted by such information, the vigilance team of the Bank conducted an internal investigation and found that more than 8 nos. of customers were affected as the petitioner had allegedly siphoned-off loan amounts in collusion with three other persons. Allegations are made to the effect that the petitioner kept the debit cards of the customers, named in the FIR, without delivering the same at the time of disbursement of the loans and without permission from the Bank. It has further been alleged that the petitioner had withdrawn the loan amounts from the savings bank accounts of the customers by using their debit cards and misappropriated the same for his personal benefit. It has also been mentioned that during internal investigation, it was found that the petitioner used a number of mobile numbers to operate the savings bank accounts of about 126 customers of 3 centres and thereby, misappropriated the loan amounts of those customers. It was found during the

Bank's investigation that the petitioner and Sunita Kumari Rai, the informant in Tezpur Police Station Case no. 363/2020, used to keep the debit cards, generated PIN for each of the customers without the permission of the Bank, and thereby, misappropriated the loan amounts for his own benefit. It was further found that the petitioner used the photographs, KYC documents and forged signatures of the customers in connivance with few other persons and all these activities were committed by the petitioner without the knowledge of and intimation to the Bank as well as behind the back of the customers.

4. Mr. Ganguly, learned counsel for the petitioner has submitted that a co-accused named Sunita Kumari Rai has already been extended the benefit of pre-arrest bail. He has further contended that the petitioner, who has also been implicated in two other crime cases viz. Tezpur Police Station Case no. 363/2020 and Tezpur Police Station Case no. 2245/2020, has been extended the benefit of pre-arrest bail in connection with those two cases. He has further contended that since a period of 2 [two] years have elapsed after rejection of the previous pre-arrest bail application of the petitioner, the investigation of the case must have progressed considerably and as such, at this stage, there would be no impediment to extend the benefit of pre-arrest bail to the petitioner.

5. Mr. Lahkar, learned Additional Public Prosecutor who has been asked to obtain the up-to-date case diary, has produced the same and has submitted that the investigation carried out after 02.08.2021 has revealed further incriminating materials against the petitioner.

6. When the previous bail application preferred by the petitioner was considered on 02.08.2021, the materials in the case diary, produced on that date, were perused. It was recorded from the materials found available in the case diary that some of the customers had submitted their KYC documents to the Bank in the year 2018 as they wanted to apply for loans from the Bank. After submission of their documents, the petitioner never informed them regarding their loans and it was in the month of October, 2020, they came to know that their loans were running in their names in the Bank. It was during the Bank's investigation carried out thereafter, it was found that the customers had never signed the loan application forms and they did not receive any loan amounts. It was further found that the loans were processed using one particular common mobile number.

7. The materials available in the case diary, produced today by the learned Additional Public Prosecutor, have been perused. From the materials in the case diary, it is revealed that the petitioner after persuading the customers of the Bank, to open their accounts, loan accounts of 126 nos. of customers were opened using one particular mobile number of the petitioner.

8. The case of the petitioner cannot be considered on the principle of parity as the co-accused Sunita Kumari Rai was not an employee of the Bank whereas the petitioner was an insider/employee of the Bank without whose involvement, loan accounts of such a large number of 126 nos. of persons could not have been opened and the amounts could not have been withdrawn without any involvement of the petitioner.

9. It is settled that after rejection of application for pre-arrest bail under Section 438, CrPC on merits, there is scope to file a subsequent bail application for pre-arrest bail only if there is a change in the fact situation or in law which requires earlier view being interfered with or where the earlier finding has become obsolete.

9. Having regard to the fact situation obtaining in the case the case, this Court finds the instant pre-arrest bail application, preferred for the 2nd time, is not merited and accordingly, the same is dismissed. It is however, clarified that the observations made hereinabove is only for the purpose of considering the pre-arrest bail prayer of the petitioner and the same shall not be construed as observations on the merits of the case for the purpose of trial.

JUDGE

Comparing Assistant