

GAHC010200772023



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

Case No. : Bail Appln./3182/2023

PAWAN CHAUDHARI @ PAWAN CHAUDHURY
S/O GANESH CHAUDHURI,
R/O PARASWA, WARD NO. 12, P.O.- BHELARI, P.S.- PALANWA, DIST.- EAST
CHAMPARAN, BIHAR, PIN- 845305.
PRESENTLY RESIDING AT VILL.- HATISAR, P.O.- DEOSIRI, P.S.-
RUNIKHATA, DIST.- CHIRANG, ASSAM, PIN- 783375.

VERSUS

CENTRAL BUREAU OF INVESTIGATION
REP. BY THE SC, CBI.

Advocate for the Petitioner : MR. M U MAHMUD

Advocate for the Respondent : SC, CBI

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

18.09.2023

Heard Mr. M. U. Mahmud, learned counsel for the applicant. Also heard Mr. M. Haloi, learned Standing counsel, CBI.

2. This is an application filed under Section 439 of the Code of Criminal Procedure, 1973, praying for grant of bail to the accused/applicant, who has been languishing in the jail hazot since 05.08.2023 in connection with RC0172023A0010 (RC 10(A)/2023-GWH), registered under Sections 120B of IPC *read with* Sections 7 & 7A of the Prevention of Corruption Act, 1988.

3. The Case Diary has been received and I have perused the same.

4. It is submitted by the learned counsel for the applicant, Mr. M. U. Mahmud, that the accused applicant is innocent however; it is a fact that he had received an amount only for helping the truck drivers in writing their names and numbers of the said trucks. And, apart from that he is not at all involved in the alleged offence but, the custom official's is involved behind this case. But, surprisingly, the co-accused/Laliteshwar Sharma, who is a custom official, was already granted with bail by the learned Trial Court, even after, making an observation that the said custom official was involved in the alleged offence.

5. He also submitted that the CBI official had already remanded the present petitioner along with the co-accused person, and after 30 days of his judicial custody, the co-accused was enlarged on bail by the learned Special Judge. But, the prayer of the present accused/applicant was rejected by the said Court. He further submitted that the accused applicant, who is a private person, cannot

work on behalf of the custom official without any information to the said official and thus, he cannot demand for any bribe as alleged in the FIR from the truck drivers without any information to the custom official. However, without any investigation made against the custom official, the present applicant has been kept behind the bar since last 50 days.

6. More so, the voice sample of the accused applicant has already been collected and the documents which are required for the further investigation of this case are kept in the office of the custom official. The present applicant is not the custodian of the records of the office of the customs. So considering the period of detention as undergone by the accused applicant, he may be released on bail and, he is still ready to co-operate with I.O. for further investigation of the case if he is enlarged on regular bail.

7. On the other hand, Mr. M. Haloi, learned Standing counsel, CBI has submitted that there is sufficient incriminating material available against the accused applicant, which is collected by the I.O. More so, it is seen that the present applicant not being the public servant, had demanded bribe from the truck drivers. Thus, Section 7A of the Act implicates the accused applicant in this case. Further, the I.O. has collected the lists of the number of trucks and its drivers, from whom he has taken bribe and also the voice sample of the applicant has already been recorded. The case is still under investigation and the custom official who may be involved in the alleged offence are yet to be booked in connection with this case. Accordingly, it is submitted that it is not a fit case to allow the accused applicant to go on bail at this stage. Further there is a possibility of hampering and tampering of the investigation of this case, if the accused applicant is released on bail.

8. Considering the submissions made by the learned Advocates of both sides and also after perusing the case record, it is seen that the co-accused/Laliteshwar Sharma has already been granted with bail after perusal of the case diary by the learned Special Judge, however, the prayer of the present applicant was rejected on the ground of his involvement in the alleged offence. It is a fact that the present applicant is not a public servant, however, as per allegation he was acting as a clearing agent on behalf of the custom official by seating in the table of the co-accused. But, the question arises, as to how the present petitioner can seat in the table of the custom official without any intimation or information of the custom official. From the Case Diary, it is seen that voice samples are already been recorded and it is also a fact that all the relevant documents are under the custody of the customs and in this regard the accused may not have any access in hampering or tampering of the said documents.

9. Considering the submissions of learned counsels for both sides and also considering the length of detention already undergone by the accused/applicant, i.e. 50 days, I am of the view that the I.O. has got ample opportunity to interrogate the accused/applicant in the custody and accordingly, further custodial interrogation of the accused/applicant seems to be not necessary here in this case.

10. Accordingly, it is provided that on furnishing a bond of Rs. 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the learned Special Judge, CBI, Guwahati the accused/applicant, namely, Pawan Chaudhari @ Pawan Chaudhury, be enlarged on bail, subject to the following conditions:

- (i) that the applicant shall make himself available for interrogation by the Investigating Officer once in every week or as and when required;
- (ii) that the applicant 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
- (iii) that the applicant shall not leave the jurisdiction of the learned the learned Special Judge, CBI, Guwahati, without prior permission.

11. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant