

GAHC010204002023



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

Case No. : Bail Appln./3209/2023

AVINASH BHARTIA AND ANR.
S/O- RAMAWATAR BHARTIA,
PERMANENT R/O- FLAT NO-09- A, BLOCK C,
SIGNATURE ESTATES, B.K KAKATI ROAD, ULUBARI, P.O- ULUBARI,
P.S- PALTANBAZAR, GUWAHATI, DIST- KAMRUP (M), ASSAM, PIN-781007

2: PAWAN KUMAR BHARTIA
S/O- RAMAWATAR BHARTIA

PERMANENT R/O- FLAT NO-09- A
BLOCK C

SIGNATURE ESTATES
B.K KAKATI ROAD
ULUBARI
P.O- ULUBARI

P.S- PALTANBAZAR
GUWAHATI
DIST- KAMRUP (M)
ASSAM
PIN-78100

VERSUS

THE UNION OF INDIA
REP, BY THE PP, CBI

Advocate for the Petitioner : MR. K K DUTTA

Advocate for the Respondent : SC, CBI

**BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR**

ORDER

19.09.2023

Heard Mr. T.J. Mahanta, learned Sr. Counsel appearing for the accused petitioners as well as Mr. M. Haloi, learned Standing Counsel, C.B.I.

2. By this petition under Section 439 Cr.P.C., the accused-petitioners, namely **1) Avinash Bhartia and 2) Pawan Kumar Bhartia** have prayed for grant of bail in connection with **C.B.I. Case No. RC 11(A)/2023/CBI-AC-II-New Delhi dated 24.07.2023** under Section **120B** of the IPC and Sections **7/9/10/12** of the P.C. Act, 1988.

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

4. The F.I.R. was lodged by one Shri Joginder Sehrawat, Inspector of Police, C.B.I., AC-II, New Delhi, before the Superintendent of Police, C.B.I. AC-II, New Delhi on 24.07.2023, *inter-alia*, against M/s Bhartia Infra Projects Ltd., of which the accused petitioners are two of the Directors and against unknown persons of M/s Bhartia Infra Projects Ltd., alleging, *inter-alia*, that one Santosh Kumar, Senior Section Engineer (SSE) during his posting at the office of the Deputy Chief Engineer, Construction-II, Northeast Frontier Railway, Silchar, supervised work of M/s Bhartia Infra Projects Ltd. (BIPL) and received Rs.75,00,000/- as undue advantage from the Company for smoothly passing the contractual bills on various occasions while performing his public duty during the period from 2019 to 2022.

5. Mr. T.J. Mahanta, learned Sr. Counsel appearing for the accused petitioners, submits that although the accused petitioners were under the C.B.I. detention from 26.07.2023, they were however, shown to have been arrested on 27.07.2023. Mr. Mahanta submits that the notices under Section 41A Cr.P.C. were issued to the accused petitioners while they were already in the custody of C.B.I. without showing any justification. Mr. Mahanta further submits that as has been held by the Hon'ble Supreme Court in the case of ***Satender Kumar Antil Vs. C.B.I. and Anr., reported in 2022 LiveLaw (SC) 577***, Courts must satisfy themselves on the compliance of Section 41 and 41A Cr.P.C. and in the case of non-compliance, would entitle the accused for bail. It has been submitted pertinently that the investigating agencies and their officers are duty bound to comply with the aforesaid mandate under Sections 41 and 41 A Cr.P.C., and the directions issued in ***Arnesh Kumar Vs. State of Bihar and Anr., reported in (2014) 8 SCC 273*** and any dereliction on their part in this regard has to be brought to the notice of the higher authorities by the Court followed by appropriate action. Mr. Mahanta submits that both the accused petitioners have undergone C.B.I. custody for four days and no further extension of custody was sought by the C.B.I. for any reason and therefore, the learned Court below remanded them to judicial custody. Mr. Mahanta submits that earlier, they were asked by the C.B.I. to appear before them first time on 05.07.2023 at New Delhi in connection with CBI Case No. RC2172023A0004 /CBI/AC-II, New Delhi by issuing a notice on 28.06.2023 and thereafter, on 10.07.2023 the accused petitioner No.2 was again questioned by the C.B.I. over phone and then on 26.07.2023 the accused petitioners were picked up by the C.B.I. Mr. Mahanta also submits after their arrest on 27.07.2023, they were interrogated by the C.B.I. which continued till 01.08.2023 and on the same day,

they were produced before the learned Court below. Mr. Mahanta also submits that since their remand to judicial custody the C.B.I. did not seek for any permission for interrogation in judicial custody. Referring to an order, dated 30.08.2023 passed in Misc. (CBI) Case No. 10/2023 by the learned Special Judge, C.B.I., Assam, Mr. Mahanta submits that the C.B.I. was seeking invocation of Section 467, 468 and 471 against the petitioners in addition to the registered offences under Section 120B of the IPC and Sections 7, 9, 10 and 12 of the P.C. Act, however, till that date no formal application was filed. Mr. Mahanta submits that during search in the residence and office of the accused petitioners, the C.B.I. has seized all the documents which they found to be relevant and as the entire prosecution case will rest upon the documentary evidence only, there is no chance of them manipulating, tampering or hampering those seized documents by the accused petitioners. Mr. Mahanta further submits that although the C.B.I. has raised allegation of bribing various public servant of Northeast Frontier Railway (NFR) since May, 2016, till date the C.B.I. has failed to arrest any such suspected public servant. Mr. Mahanta vehemently submits that M/s Bhartia Infra Projects Limited had never paid any gratification amount through a number of bank accounts of the said Company to the tune of Rs.75,00,000/- to the prime accused Santosh Kumar, SSE, N.F. Railway, who is named in the F.I.R. Therefore, Mr. Mahanta, learned Senior Counsel, submits that the allegation of entering into criminal conspiracy with co-accused person(s) and paying bribe to said Santosh Kumar for smoothly clearing the bills of the said Company does not arise at all and also that all payments to the contractors of N.F. Railways are made through online mode which is fully digital and as such, transparent in transactions. Mr. Mahanta contends that said Santosh Kumar, that is, accused No.1 in the F.I.R., who is the sole public

servant, implicated in the case and other named accused in the F.I.R. are not yet arrested by the C.B.I. till date. However, Mr. Mahanta submits, the present accused petitioners in spite of being not public servant and their cooperation with the investigating officer from earlier have been arrested and taken in C.B.I. custody for four days and even thereafter, they are languishing in judicial custody. According to Mr. Mahanta, learned Senior Counsel appearing for the accused petitioners, as both the accused petitioners are arrested and detained in judicial custody on a false accusation as well as for the aforesaid reasons they deserve to be released on bail subject to any condition(s) including deposit of their Passport etc. with the investigating officer, if deemed necessary.

6. Opposing the bail application, Mr. M. Haloi, learned Standing Counsel for the C.B.I., submits that after registration of the case, it was felt essential in the interest of investigation of the case to conduct searches at the residential/official premises of the accused persons so as to secure incriminating documents/materials regarding the illegal gratification paid to public servant through his family members. Accordingly, Mr. Haloi submits that searches at the residential and official premises of the accused petitioners were conducted on 26.07.2023 on the strength of Search Warrants under Section 93 of the Cr.P.C. issued by the Court of learned Special Judge, C.B.I., Guwahati and thereafter, the accused petitioners also joined in the search proceedings at their office on 27.07.2023 at 11.10 a.m. Mr. Haloi submits that notices under Section 41A Cr.P.C. were issued to the accused petitioners for their appearance at C.B.I. Camp Office, Maligaon Railway Guest House, Guwahati which were received by the accused petitioners themselves and as such, all proceedings including arrest of the accused petitioners were conducted by the C.B.I. as per law. Mr. Haloi also submits that on the application of C.B.I., the learned Special Judge, C.B.I.

was pleased to grant four days police custody. Mr. Haloi submits that the investigation has revealed that accused Santosh Kumar, SSE, Northeast Frontier Railway has been paid illegal gratification to the tune of Rs.2,01,83,026/- (approx.) by M/s Bhartia Infra Project Limited during the period from 01.05.2016 to 31.07.2023 for smooth passing of the contract bills in the projects supervised by him and the said amount has been paid in cash as well as in the accounts of the relatives of Santosh Kumar as per the direction of the accused petitioner No.2. Mr. Haloi submits that although the relatives of accused Santosh Kumar in whose accounts payments have been made by Bhartia Infra Project Limited never supplied any construction material to the Company, during search at the office of the said Company many incriminating documents including original bills purportedly issued by the family members of accused Santosh Kumar in favour of the Company were seized. Mr. Haloi submits that the investigation has further revealed that the bribe amount was digitally transferred to the accounts of the relatives of accused Santosh Kumar which goes through two IDs (maker and checker) and in these transactions the accused petitioner No.2 is the maker and the accused petitioner No.1 is the checker. Therefore, Mr. Haloi submits that if the accused petitioners are released on bail, there is every likelihood of them influencing the witnesses and fleeing from the jurisdiction of this Court and as such, they may not be released on bail.

7. I have considered the above submissions made by the learned counsel of both sides and perused the case diary as well as the order, dated 30.08.2023, passed by the Court of learned Special Judge, C.B.I., Assam in Misc. Case (CBI.) No.10/2023.

8. A perusal of the case diary, it is, *inter-alia*, revealed that both the accused

petitioners are brothers and they are Directors of M/S Bhartia Infra Projects Ltd. dealing in civil engineering works of various nature as contractor of Northeast Frontier Railway (N.F.R.). The basic allegation against them is that they allegedly paid Rs.75,00,000/- on multiple occasions through various bank accounts of the said Company to near relatives of prime accused Santosh Kumar, SSE, N.F. Railway (NFR), a public servant, namely Ambika Saw and Smt. Pushpa Kumari, his father and sister-in-law respectively. The purpose of the aforesaid amount was allegedly by way of bribe to secure passing of false bills of contractual works during the period 2019-2022, they had executed in the name of the Company under the supervision of said Santosh Kumar, SSE. The record reveals that the said prime accused Santosh Kumar, a public servant, was earlier arrested in connection with CBI Case No. RC 4(A)/2023, AC-II, New Delhi and then, he was released on bail and as such, in connection with the instant separate case, which is arising out of the said earlier case has not been arrested. So also, the said Ambika Saw and Pushpa Kumari prima facie the abettor of the aforesaid crime allegedly committed by the principal accused, namely Santosh Kumar, who is a public servant, are yet to be brought to book for a detailed investigation into their role.

9. The C.B.I. conducted search at various places including in the office of the Company on the strength of search warrants issued by Court and seized the relevant ledger accounts, credit and debit vouchers, laptops, other documents etc. It has been projected that some of the seized bills were false and fabricated to secure false bill amount payments. It may be noted here that some specimen signatures of the signatories on the documents are taken for examination by the handwriting expert of the F.S.L.

10. The case diary does not disclose any prima facie evidence that the digitally transferred amount of Rs.75,00,000/- to the aforesaid account holders who are stated to be relatives of Santosh Kumar, the public servant, was paid to the latter by them for undue advantage over causing payment of incriminating false bills as alleged, consequent upon which some payments were made to the Company of the accused petitioners, which is, of course, subject to final outcome in investigation. Although it has been submitted that the offences under Sections 467/468 and 471 of the IPC have been invoked in the case, the case diary does not reveal that any such judicial order has been obtained from the Court of learned Special Judge, C.B.I., Assam till date. Therefore, the investigation so far achieved does not give a clear picture that the accused petitioners prima facie credited the aforesaid alleged gratification amounts to the accounts of the near relatives of the prime accused pursuant to any agreement between them and the prime accused Santosh Kumar by way of a motive or reward for doing his official act. The petitioners are apparently not 'public servant' within the meaning of Section 2(c) of the P.C. Act.

11. It is noticed that the accused petitioners have been in judicial custody since 28.07.2023, that is, for 54 days and they are being chronic asthmatic patients undergoing treatment under Dr. Rajkumar Bharatia vide the medical documents, Annexure-1.

12. It is further noticed that the notices under Section 41A Cr.P.C. were served to the accused petitioners on 27.07.2023 asking them to appear before the investigating officer at his office on the same day at 1400 hours although they were already under their detention from the previous day, that is, 26.07.2023. The accused petitioners were shown arrested on 27.07.2023 at around 11 p.m.

which was contrary to the mandate of the Hon'ble Supreme Court laid in ***Satender Kumar Antil (supra)*** which make them entitled to bail on this count alone.

13. For the above stated reasons, this Court is of the considered opinion that further continuation of detention of the accused petitioners in the interest of the ongoing investigation is not warranted.

14. Accordingly, it is provided that each of the accused petitioners, named above, shall be released on bail of **Rs.1,00,000/- (Rupees One Lakh)** with two sureties of like amount to the satisfaction of learned **Special Judge, C.B.I., Assam** subject to the following conditions-

i) That the accused petitioners shall cooperate with the Investigating Officer as and when required;

ii) That the accused petitioners 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 Police Officer or the Court;

iii) That the accused petitioners shall refrain from committing any offences similar to the one of which they are suspected of commission;

iv) That the accused petitioners shall not leave the territorial jurisdiction of Guwahati city till completion of investigation without written permission from the investigating officer; and

v) That the accused petitioners shall deposit their passports in original with the Court of learned Special Judge, C.B.I., Assam.

Breach of any of the above conditions shall render cancellation of the bail in

accordance with law.

Return the case diary.

This disposes of the bail application

JUDGE

Comparing Assistant