

GAHC010204452019



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

Case No. : AB/2829/2019

AINUL HOQUE MOLLA
BLOCK DEVELOPMENT OFFICER, NARAYANPUR DEVELOPMENT BLOCK,
NARAYANPUR, PIN-784164, DIST. LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A KHOUND

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 18-01-2023

Heard Mr. J. Das, learned counsel for the petitioner and Mr. B. Sharma, learned Additional Public Prosecutor for the respondent State of Assam.

2. The petitioner, Md. Ainul Hoque Molla preferred the instant application under Section 438, Code of Criminal Procedure, 1973 [CrPC], seeking the

benefit of pre-arrest bail, apprehending his arrest, in connection with Narayanpur Police Station Case no. 174/2019 [corresponding G.R. Case no. 2116/2019], registered for offences under Sections 120B/409/403/420, Indian Penal Code [IPC].

3. The First Information Report [FIR] in connection with Narayanpur Police Station Case no. 174/2019 was lodged by the Deputy Commissioner, Lakhimpur on 17.08.2019. In the FIR, 5 [five] persons had been arraigned as accused and they were :- [1] Md. Ainul Hoque Mulla [the petitioner herein], [2] Sri Chai Hun Gohain, [3] Sri Hemanta Kr. Deka, [4] Sri Jayanta Hazarika and [5] Sri Prabin Saikia. As per the FIR, during the physical verification carried out on 15.08.2019 by the Deputy Commissioner, Lakhimpur with the Project Director, DRDA, Lakhimpur and the Executive Engineer, DRDA, Lakhimpur in connection with the scheme, 'Construction of bundh cum road from Silikhaguri road via Phulanikhat High School to Mermukh Sports Association under MGNREGA – 2018-2019' [the Scheme' for short], it was found that gross irregularities and misappropriation had been committed during execution of the Scheme by the five accused persons named herein. The petitioner herein was the Block Development Department Officer of Narayanpur Development Block, Narayanpur at the relevant time.

4. When the instant application was moved on 29.08.2019, while granting interim protection to the petitioner, the concerned case diary was directed to be produced on the next date. It appears from the order dated 29.08.2019, the interim protection was granted upon perusal of the statements in the FIR and the materials placed before the Court and the Court was of the view that till a final decision was taken, on perusal of the case diary, the petitioner be allowed to remain on interim pre-arrest bail.

5. On 13.11.2019, the concerned case diary was placed before the Court. The Court upon perusal of the materials of the case diary, had observed that the works connected with the Scheme was worth Rs. 16 lakhs and Rs. 11,31,000/- had been released and disbursed. The case diary showed that 60% to 70% work of the Scheme had already been completed. The Court observed that the amount till then released and the works till then done in respect of the Scheme appeared to be commensurate to each other and it did not appear that there was any such material requiring custodial interrogation of the petitioner. The interim protection granted to the petitioner was made absolute by order dated 13.11.2019.

6. The other four accused persons, named in the FIR, as the petitioners moved another bail application, A.B. no. 2828/2019 on 02.03.2020 before another bench. While moving the application, it was canvassed on behalf of those four petitioners that the co-accused of the four petitioners viz. Md. Ainul Hoque Molla had already been allowed the benefit of pre-arrest bail under Section 438, CrPC in connection with the same FIR and in such circumstances, the petitioners should also be allowed the same concession. Contention was advanced on behalf of the prosecution on the basis of a written instruction dated 25.09.2019, furnished by the Investigating Officer [I.O.] of the case, to the effect that the benefit of pre-arrest bail granted to the petitioner, Md. Ainul Hoque Molla was on wrong facts as the materials in the case diary revealed otherwise. On the basis of the written instruction dated 25.09.2019, the Court observed that the total expenditure incurred was worth only Rs. 68,790/-. The total sum of Rs. 11,30,936/- was paid through 106 muster rolls which were signed by the accused persons against the head of the wage expenditure under the Scheme which had the estimated amount, Rs. 16,00,000/-. The other Bench

observed that the coordinate Bench while passing the order dated 30.11.2019 in A.B. no. 2829/2019 [Md. Ainul Hoque Molla vs. The State of Assam] went out to grant pre-arrest bail to the petitioner therein for wrong reasons which did not emanate from the records. Observing so, the Court while dismissing the application, A.B. no. 2828/2019, issued notice to the petitioner in A.B. no. 2829/2019 viz. Md. Ainul Hoque Molla asking him to show cause as to why the pre-arrest bail granted to him should not be cancelled. The application, A.B. no. 2829/2019 was thereafter, listed on 18.03.2020, 24.03.2020, 23.04.2020, 06.05.2020, 19.05.2020, 02.06.2020, 16.06.2020, 25.06.2020, 30.07.2020, 10.08.2020 and 19.08.2020 awaiting appearance of the petitioner, Md. Ainul Hoque Molla. It was observed in the order dated 16.06.2020 [supra] that vide order dated 09.06.2020, the proceedings against the petitioner, Md. Ainul Hoque Molla in A.B. no. 2829/2019 had been stayed by the Hon'ble Supreme Court of India. The order dated 09.06.2020 passed by the Hon'ble Supreme Court of India in Special Leave to Appeal [Crl.] No[s] 2581-2582/2020 [Ainul Hoque Molla vs. The State of Assam] is part of the case record. By the said order dated 09.06.2020, the proceedings against the petitioner, Md. Ainul Hoque Molla in the application, A.B. no. 2829/2019, pending before this Court, were stayed in the meanwhile, while issuing notice to the State. The final order passed in Criminal Appeal Nos. 2204-2205/2022 [Ainul Hoque Molla vs. The State of Assam] arising out of SLP [Crl] Nos. 2581-2582/2020 dated 07.12.2022 reads as under :

“Leave granted.

The learned counsel for the respondent submits that counter affidavit has not been placed on record and she has no instructions also qua the investigation.

In terms of order dated 09.06.2020, we had noticed that the bail had

already been granted to the appellant but while considering the bail application of the co-accused, declining bail, the learned Judge issued notice to the appellant herein on the premise that the bail was granted erroneously earlier. It was her submission that the order passed in his favour ought not to have been reviewed through the process of consideration of a bail application of the co-accused, albeit by the then Chief Justice of the High Court.

Thus in these circumstances we have granted stay of the order passed by the Gauhati High Court dated 06.05.2020 by which the aforesaid step was sought to be taken.

In view of the aforesaid circumstances, we set aside directions contained in the impugned order directing notice to be issued to the appellant herein for cancellation of the bail.

The appeals are allowed leaving the parties to bear their own costs.”

7. It is reflected from the order dated 07.12.2022 that it was submitted before the Hon’ble Supreme Court of India that the order passed in favour of the petitioner, Ainul Hoque Molla ought not to have been reviewed through the process of consideration of a bail application of the co-accused and the Hon’ble Supreme Court of India had set aside the impugned direction whereby notice was issued to the appellant therein i.e. the petitioner herein viz. Ainul Hoque Molla for cancellation of the bail. The Hon’ble Supreme Court of India had, thus, allowed the Criminal Appeal Nos. 2204-2205/2022.

8. In view of the above final order dated 07.12.2022 passed by the Hon’ble Supreme Court of India, there is no necessity for further adjudication of the instant bail application as there is no interference with the order dated 13.11.2019 passed by this Court in the instant application, A.B. no. 2829/2019

and accordingly, the same is closed.

JUDGE

Comparing Assistant