

GAHC010210672023



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

Case No. : AB/3203/2023

PRASANTA HAZARIKA
S/O LATE HIRA HAZARIKA
R/O BORBORUAH
P.S. BORBARUAH
DIST. DIBRUGARH

VERSUS

THE STATE OF ASSAM
REP. BY THE LEARNED PP, ASSAM

Advocate for the Petitioner : MR. S BORTHAKUR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

18.10.2023

Heard Mr. S. Borthakur, learned counsel for the applicant and also heard Mr. P. Borthakur, learned Additional Public Prosecutor, Assam for the State respondent.

2. Apprehending arrest in connection with BI (EO) P.S. Case No. 21/2023, under Sections 120(B)/379/411/119 of the Indian Penal Code, read with Section 35/41 of Assam Forest Regulation Act, this application under Section 438 Cr.P.C. is preferred by the applicant, namely, Sri Prasanta

Hazarika, for grant of pre-arrest bail.

3. The above noted case has been registered on the basis of one FIR lodged by one Sanjib Kumar Goswami, Inspector of Police, BI(EO), Assam on 25.08.2023.

4. The essence of allegation made in the said FIR is that on the basis of news item published in Axomia Pratidin on 04.03.2023, a preliminary enquiry was conducted by Shri Amrit Ch. Kalita, Dy.S.P. CM's SVC, Assam and a report, vide PE No. 05/2023, was submitted, which indicates that several persons, namely, Dandinath Missong, Dimbeswar Mipun, Memsura Missong, Mona Missong and Chandra Missong of Village Dadhiya, under Chabua P.S. are involved in smuggling timbers illegally from Dibru- Saikhowa National Park. The report also indicates that several saw mills, namely, Khan Saw Mill, Santosh Kumar Dhelia Saw Mill, Raj Saw Mill, Rupai Saw Mill, Asu Das, Mukti Singh, Ramavater Saw Mill, Das & Das Saw Mill, which are set up on the river bank of Brahmaputra, near Dibrugarh Town, collects the logs from the river and transported it after sawing. The report further indicates that one Pradip Medhi, Writuraj Buragohain, Raju medhi, Kalyan Sonowal, Mohan Sonowal, Hemanta Moran, Gunin Gogoi, Dharani Gogoi, Sanjoy Sharma and Wajid Khan of Tinsukia district have been running timber business covering Assam Arunachal border area. Further, the report indicates that local Forest Officials of Sadiya, Doom Dooma, Talap, Tinsukia, Dibrugarh, Guijan Range and Saikhowa Wildlife Range and Police Officials are aware about such illegal trade.

5. Mr. Borthakur, learned counsel for the applicant submits that pursuant to order of this Court dated 18.09.2023, by which the applicant was granted the privilege of interim pre-arrest bail, had appeared before the Investigating Officer and he has been cooperating with the investigating agency and that, the offence under Sections 120(B)/379/411 of the Indian Penal Code are not attracted in respect of the applicant and the only Section that may be attracted is 119 of the IPC and that the BI(EO) has no authority to investigate the case under Sections 35/41 of the Assam Forest Regulation Act and that the applicant has been cooperating with the investigating agency. And therefore, Mr. Borthakur contended to make the interim order dated 18.09.2023 absolute in the same terms and conditions.

6. Whereas Mr. P. Borthakur, learned Additional Public Prosecutor has produced the case diary before this Court and referring to the materials collected so far as the case diary, Mr. Borthakur submits that the applicant has received the commission regularly from the co-accused persons and his custodial interrogation is necessary and, therefore, Mr. Borthakur contended to dismiss the petition.

7. Having heard the submission of learned Advocates of both the sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary with the

assistance of Mr. Borthakur, learned Additional Public Prosecutor.

8. It is not in dispute that the applicant has been cooperating with the investigating agency. But, it appears from the materials collected so far in the case diary that the applicant had received commission on regular basis from the co-accused persons. Further, it appears that the investigation is still going on and some of the co-accused are yet to be arrested and it cannot be said from the materials collected in the case diary that custodial interrogation of the applicant is not required in the interest of investigation. His custodial interrogation is indispensable to unearth the conspiracy and to apprehend the co-accused and therefore, this Court is of the view that this is not a fit case for the privilege of pre-arrest bail can be granted to the applicant. Accordingly, the present application for pre-arrest bail is dismissed.

9. The interim order dated 18.09.2023 stands vacated. The case diary be returned.

JUDGE

Comparing Assistant