

GAHC010214832023



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

Case No. : Bail Appln./3394/2023

GULZAR HUSSAIN
S/O LATE MUSLEM UDDIN AHMED
R/O VILL- BOTABORI
P.O. TENGAGURI
P.S. LAHORIGHAT
DIST. MORIGAON, ASSAM,
PIN-781319

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR M H AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 28.09.2023

1. Heard Mr. M. H. Ahmed, learned counsel for the petitioner. Also heard Mr. R. R. Kaushik, learned Additional Public Prosecutor for the State as well as Mr. S. Borthakur, learned counsel representing the victim.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, has been filed by the petitioner, namely, Gulzar Hussain, who has been detained behind the bar since 14.09.2023 in connection with Bhelowguri P. S. Case No. 29/2023 under Sections 120B/420/409/468/34 of the Indian Penal Code.

3. The gist of accusation in this case is that one Amir Uddin lodged an complaint before the Chief Judicial Magistrate, Morigaon, *inter-alia*, alleging that seven persons named in the said complaint have forged certain documents including the job cards of different beneficiaries and misappropriated the public money in respect construction of residential houses under Pradhan Mantri Awas Yojana-Gramin (PMAY-G) which were given to below poverty line category persons. The said complaint was forwarded to the officer In-charge of Bhelowguri Police Station for registration of FIR and to investigate the matter under Section 156 (3) of the Code of Criminal Procedure, 1973, and accordingly, Bhelowguri P. S. Case No. 29/2023 under Sections 120B/420/409/468/34 of the Indian Penal Code was registered.

4. Learned counsel for the petitioner has submitted that though the present petitioner, namely, Gulzar Hussain was not named in the FIR, however, as the police was also searching him in connection with the said case, he approached this Court by filing anticipatory bail application, namely, AB Case No. 1889/2023 and he was granted interim anticipatory bail by order dated 31.05.2023 with a direction to him to appear before the Investigating Officer within ten days from the date of the said order and accordingly, the petitioner appeared before the Investigating Officer on 05.06.2023 along with the bail. However, the Investigating Officer did not make any inquiry from him and simply took the signature on some papers. It is further submitted that when the said

anticipatory bail application was again listed before the Court, the Investigating Officer made a false statements through the learned Additional Public Prosecutor that the present petitioner did not appear before him.

5. However on that day this Court again granted the present petitioner another four days to appear before the Investigating Officer and accordingly, on 06.08.2023 the present petitioner again appeared before the Investigating Officer. Therefore, the Investigating Officer again called the present petitioner to the police station on 15.05.2023 and on that day when he appeared, the signature of the petitioner was obtained by the Investigating Officer on the notice under Section 41A of the Code of Criminal Procedure, 1973, and his statement was also recorded.

6. The interim anticipatory bail granted to the present petitioner was extended till 12.09.2023, however on that day, this Court considering the fact that there are specific allegations against the present petitioner and also the fact that the investigation was at early stage, rejected his prayer for anticipatory bail and therefore, on 14.09.2023 the present petitioner was arrested and produced before the Court of learned Chief Judicial Magistrate, Morigaon with a prayer for police remand. However, learned Chief Judicial Magistrate, Morigaon did not allow the prayer for police remand as the present petitioner was suffering from ailment.

7. Learned counsel for the petitioner has submitted that the present petitioner is the elected President of Tulshibori Gaon Panchayat in Morigaon District and his political opponents have conspired to keep him behind the bar. As apart from being elected as the President of Tulshibora Gaon Panchayat, there is likelihood of petitioner getting elected as Chairman of Board of Directors of Tengaguri S.S. Limited and therefore, his political opponent want to prevent him

from becoming the Chairman by keeping him under detention.

8. It is also submitted by learned counsel for the petitioner that in exercise of powers under Section 4 of the Assam Panchayat Act, 1994, the Gaon Sabha held a meeting on 03.01.2023 and cancelled the names of some of the beneficiaries of PMAY-G who were not found to be eligible for availing the said benefits and as the present informant was one of the persons whose name was cancelled.

9. It is also submitted by the learned counsel for the petitioner that it is the Gaon Panchayat Co-ordinator who is responsible for implementation of PMAY-G scheme as per Clause 1 of the instructions dated 22.07.2017 issued by the Department of Panchayat and Rural Development, Government of Assam. Further, it is submitted by learned counsel for the petitioner that the petitioner has appeared before the Investigating Officer on several occasions and his statement was also recorded under Section 161 of the Code of Criminal Procedure, 1973. It is also submitted by learned counsel for the petitioner that the accused no.1 and accused no.4 named in the FIR have already been granted by a co-ordinate Bench of this Court in case AB No. 1970/2023 and BA No. 1977/2023 respectively.

10. On the other hand, Mr. R. R. Kaushik, learned Additional Public Prosecutor has produced the case diary of Bhelowguri P. S. Case No. 29/2023 and has submitted that there are incriminating evidence against the present petitioner in the case diary and releasing the present petitioner on bail at this stage would have adverse impact on the investigation of this Court and it is also submitted that the Investigating Officer of this case has reported that the present petitioner by showing his political cult has tried to influence the beneficiaries and there is every possibility of him tampering the evidence.

11. It is also submitted by the learned Additional Public Prosecutor that the

present petitioner has been involved in misappropriating the funds which were for the benefit of below poverty line citizens for whom the PMAY-G scheme has been evolved and they were deprived of their due only because of the illegal activities of the present petitioner and the other co-accused.

12. Mr. S. Borthakur, learned counsel for the victim has also vehemently opposed the grant of bail to the present petitioner on the ground that that the poor citizens who were otherwise entitled to get the benefit of PMAY-G scheme were deprived of the same because to the misdeeds of the present petitioner who is also the representative of the present petitioner.

13. I have considered the rival submissions made by the learned counsel for the parties and also perused the materials available on record including the case diary of Bhelowguri P. S. Case No. 29/2023.

14. On perusal of the case diary, it appears that the investigation of this case has fairly progressed and on two occasions the statements of the present petitioner has been recorded by the Investigating Officer under Section 161 of the Code of Criminal Procedure, 1973. It also appears that though the Investigating Officer has an apprehension that the present petitioner may influence the witnesses and may tamper with the evidence. However, no specific allegations has been made against the present petitioner by any of the witnesses stating that they were threatened or influenced in any manner by the present petitioner by asking them not to co-operate in the investigation by the Investigating Officer.

15. I also appears that two of the main accused named in the FIR have already been granted bail by this Court.

16. Further, it also appears that the petitioner has already undergone detention since 14.09.2023 and the Investigating Officer has failed to justify why his

further custodial detention would be necessary if he co-operates in the investigation.

17. Hence, considering all the above aspects, this Court of the opinion that if the petitioner co-operates that the Investigating Officer his further custodial detention may not be necessary for fair completion of the investigation of Bhelowguri P. S. Case No. 29/2023.

18. In view of the above, the present petitioner, namely, Gulzar Hussain, is allowed to go on bail on furnishing of bail bond of Rs. 50,000/- (Rupees Fifty Thousand only) with one surety of like amount to the satisfaction of the Chief Judicial Magistrate Morigaon subject to the following conditions:

- i. That the petitioner shall appear before the Investigating Officer of Bhelowguri P. S. Case No. 29/2023 every week for next six weeks or til completion of investigation, whichever is earlier and co-operate in the investigation.
- ii. That the petitioner shall not leave the jurisdiction of the Court of learned Chief Judicial Magistrate, Morigaon, during the pendency of investigation of Bhelowguri P. S. Case No. 29/2023 without prior leave of CJM, Morigaon and with intimation of the same to the Investigating Officer of Bhelowguri P. S. Case No. 29/2023.
- iii. The accused-petitioner 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 Investigating Officer of the said case or to any court.

19. Any violation of the above conditions may be good ground for cancellation of the bail granted to the present petitioner.

20. This bail application is accordingly disposed of.

JUDGE

Comparing Assistant