

GAHC010226572023



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

Case No. : Bail Appln./3557/2023

GAYATRI SONOWAL
D/O SRI BIMAL CHANDRA SONOWAL
R/O DARRANG COLLEGE ROAD

OPPOSITE LAW COLLEGE
UNDER TEZPUR POLICE STATION

IN THE DISTRICT OF SONITPUR
ASSAM
PIN-784028.

VERSUS

THE STATE OF ASSAM
REP. BY THE PP
ASSAM

Advocate for : MR. A K BHATTACHARYYA
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

17.10.2023

Heard Mr. A.K. Bhattacharyya, learned Sr. counsel assisted by Mr. D.K.

Bhattacharyya, learned counsel appearing for the accused petitioner. Also heard Mr. M. Phukan, learned Public Prosecutor, Gauhati High Court appearing for the State respondent.

2. By this petition under Section 439 Cr.P.C., the accused petitioner, namely **Gayatri Sonowal** has prayed for grant of bail in connection with **CID P.S. Case No.14/2023** registered under Sections **120B/341/342/448/294/323/307/379/387/427/506** of the IPC read with Sections **98(a)/99(3)(4)(5)(6)** of the Assam Police Act, 2007.

3. The case diary in 5 volumes, as called for, is placed before the Court.

4. Mr. A.K. Bhattacharyya, learned Sr. counsel appearing for the accused petitioner, presenting his submission initially referred to the nature of allegations made in the F.I.R. against the accused. Mr. Bhattacharyya, submits that as there is no iota of evidence in support of these allegations, it cannot be said that there is any foundation of such allegations made after 40(forty) days of purported commission, without explaining the delay. Unfortunately, however, Mr. Bhattacharyya submits, the accused petitioner, who is a senior woman police officer and mother of a 25(twenty five) days old baby, has been forced to languish in jail for 44(forty four) days till today due to defective investigation of the investigating agency. Mr. Bhattacharyya, learned Senior Counsel has advanced an exhaustive critical analysis on the ingredients of the penal offences under which the case is registered in the context of the allegations made in the false and fabricated F.I.R. and submits that the ingredients constituting these offences are not satisfied in the case. Relevantly, Mr. Bhattacharyya submits that except the offences under Sections 379/307/387 of the IPC, all other offences are bailable. Referring to the seizure memos, Mr. Bhattacharyya, learned Sr.

Counsel, submits that the nature of articles seized from the possession of the accused petitioner has no relevance in the case. Mr. Bhattacharyya, submits that in order to prosecute a person on the charge of criminal conspiracy defined in Section 120A, there must be prima facie evidence either direct or circumstantial showing that there was an agreement between the conspirators to commit an offence or actional wrong to sustain a punishment under Section 120B of the IPC, but neither the F.I.R. nor the Forwarding Report indicate existence of such agreement even tacitly among the so called conspirators. In this regard, Mr. Bhattacharyya, learned Senior Counsel, refers to Section 10 of the Evidence Act and submits that the aforesaid provision is an exception to the rule that an act or action of a person/accused cannot be used as evidence against another unless it is found that they conspired together. Mr. Bhattacharyya, therefore, submits that in absence of some amount of prima facie incriminating evidence against the accused petitioner woman with baby, it is just and proper to pass a direction for her release on bail resorting, among other reasons, to proviso of sub-Section (1) of Section 437 refracting what the case diary prepared under Section 172 Cr.P.C. contains. In support of his submission, Mr. Bhattacharyya, learned Senior Counsel, relies on the judgment rendered by the Hon'ble Supreme Court in *Pabitar Singh Vs. State of Bihar*, reported in (1972) 3 SCC 354.

5. Opposing the bail application, Mr. M. Phukan, learned Public Prosecutor, submits, *inter alia*, that the investigation reveals prima facie evidence that the accused petitioner, who is a senior police officer of Bajali district in conspiracy with her husband and other senior police officials extorted money to the tune of Rs.10 lakhs and 23 numbers of signed cheques from the relatives of the informant for the purpose of his release from police custody and accordingly, on

receipt of the aforesaid amount of money and signed cheques, the informant was released. Mr. Phukan further submits that even thereafter, with the help of her PSO the accused petitioner demanded more money, vehicle and laptops on various dates from the family members of the informant and engaged another arrested co-accused for negotiating the demanded money with the informant's family members. Thus, Mr. Phukan submits, there is abundance of incriminating material that has surfaced during investigation into the F.I.R. and as such, the bail application of the accused petitioner at the nascent stage of investigation may not be considered favourably.

6. The brief facts of the case are that a complaint was lodged before the Chief Minister of Assam by one Rabiul Islam alleging, *inter alia*, that on 16.07.2023, at around 1.30 A.M., some police personnel forcefully entered into his dwelling house by breaking its door while he and his wife were asleep. When he and his family members raised alarm, they were assaulted by the police. The police team enquired from him about some drugs and cash. As the informant told the police party that he had no knowledge of any such drugs and cash or any deal, he was physically tortured for about 2 to 3 hours and his house was searched without any search warrant. The police ransacked his house and took away his car keys, passport, mobile handsets, bank passbook, ATM Cards, house keys and other valuable documents. Thereafter, the informant along with his cousin brother and maternal uncle were forcefully taken away, initially to Bhawanipur police outpost and later on to the residence of the Superintendent of Police, Bajali. There, he was interrogated by the Superintendent of Police, Bajali in presence of the In-Charge, Bhawanipur Police Outpost about the purported illegal articles and on his denial, he was again tortured by the Superintendent of Police and asked him to deal with him directly. Further, the

Additional Superintendent of Police, Bajali asked him about 80 pieces of gold biscuits to which the informant replied that he had no knowledge and he was again physically tortured and taken back to Bhawanipur Police Outpost. There, the DSP and other police officials physically assaulted him for about 30 minutes and threatened with dire consequences. The police also ransacked the office of the informant and the house of his father-in-law without search warrant and registration of any police case. On 17.07.2023, at around 12.30 a.m., the In-Charge of Bhawanipur Police Outpost along with three other persons took the informant to the national highway near detergent factory at Kohara in a bolero vehicle without number plate and demanded an amount of Rs.2.5 Crores from him and threatened to encounter him by showing his links with Pakistani and Bangladeshi Jihadi elements. At Bhawanipur Police Outpost, the informant was forcefully made to pay a cash sum of Rs. 10 lakhs through his family members and 21 numbers of cheques of Rs. 10 lakhs each from the bank accounts of his mother. Further, the Additional Superintendent of Police, Bajali demanded another amount of Rs.2.5 crores and when the informant refused, he was released by taking signatures on blank papers and issued notice under Section 41A Cr.P.C. She also demanded money from the informant's sister through one Kishore Baruah and threatened to implicate him too in a false case, if her demands were not met. On 30.07.2023, the Additional Superintendent of Police, Bajali also asked the informant's brother-in-law to book an Innova car for her and Rs. 5 lakhs for releasing his valuable documents.

7. It is noticed that the accused petitioner has been in judicial custody since 03.09.2023, that is, for 45 days.

8. On scrutiny of the evidence so far collected by the investigating officer, it is revealed, *inter alia*, that on 16.07.2023 while the informant was under the

custody of Bhabanipur Police Outpost, one co-accused in conspiracy with the present accused petitioner demanded Rs.3 Crores from the Manager of the business establishment of the informant, namely M/S RBS Traders for release of the informant showing fear of death of the informant in encounter. As part of their conspiracy, it is prima facie revealed that on the night of the same day, the accused petitioner involved her husband (co-accused) to accompany others to put the informant in fear of death to compel him to deliver the demanded money and accordingly, out of fear, the relatives of the informant handed over a cash sum of Rs.10 lakhs and 23 number of signed cheques to them to ensure release of the informant from police custody. It is also prima facie revealed from the case diary that after receipt of the aforesaid amount of money and signed cheques, the present accused petitioner released the informant allegedly after detaining him from the morning of 16.07.2023 to the afternoon of 17.07.2023 illegally by issuing a notice under Section 41A Cr.P.C. with reference to a G.D. entry (without reference to any case number) in connivance with a co-accused police officer. It has been further revealed that the accused petitioner in connivance with his PSO demanded cash money, vehicles and laptops on various dates from the family members of the informant and engaged one co-accused for negotiating the demanded money as part of their purported organized conspiracy. On 31.07.2023, it is revealed from the case diary that the accused petitioner again demanded one Innova vehicle and cash sum of Rs.10 lakhs and two Apple MacBook laptops, one for herself and another for the district police chief, one of which has already been recovered and seized with other extorted articles from one co-accused.

9. On further scrutiny of the case diary, it is revealed that two mobile handsets of the accused petitioner were seized on 02.09.2023 and were sent to

the F.S.L. for extraction of the contents therein, the result of which shows some incriminating material against her. The investigating officer has been persistently making searches for recovery of the second Apple MacBook laptop which the accused petitioner accepted from the family members of the informant. It is noted that the seized articles match the articles that appear in the images of Apple MacBook found in extracted data of the seized mobile phones of the accused petitioner. Thus, it prima facie appears that the accused petitioner participated and shared a common design and a common intention with the co-accused persons, who are mostly senior police officials of Bajali district and police personnel, private persons to extort money, electronic items, vehicle etc. aforementioned. The investigation is yet to be completed into certain vital aspects of the case and as such, it is quite premature to form any definite opinion regarding the applicability of the penal provisions under which the case is registered which is subject of trial in due course. It is respectfully stated that in the backdrop of facts and circumstances of serious nature that emerged from the case diary, the case of the accused senior police officer cannot be favourably considered in the light of the ratio of the judgment rendered in *Pabitar Singh (Supra)*.

10. For the reasons set forth above, this Court is of the opinion that if the liberty of bail is granted to the accused petitioner at the present initial stage of investigation into the case, which prima facie manifests unholy nexus between police officers and private persons detrimental to public interest, the ongoing investigation into the case is likely to be adversely affected and that would certainly jeopardize the statutory right of a fair and unhindered investigation irrespective of delay in filing the F.I.R. disclosing cognizable offence allegedly committed by police as well as the benefit of proviso of Section 437(1) Cr.P.C.

referred to above.

11. Accordingly, the bail application of the accused petitioner, named above, is rejected.

12. It is provided that the Superintendent of Central Jail, Guwahati shall make appropriate provisions for providing food and medical care to the accused petitioner and her 25 days old baby, if in custody with the mother.

Return the case diary.

This disposes of the bail application.

JUDGE

Comparing Assistant