

GAHC010223492023



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

Case No. : Bail Appln./3565/2023

HEMENDRA SARMAH
S/O LATE NARESWAR SARMAH
PERMANENT RESIDENT OF VILL- PAKABANGIPARA, P.O. BORDOULGURI
P.S. SIPAJHAR
DIST. DARRANG, ASSAM
RENTAL ADDRESS- C/O MANJULA HAZARIKA, W/NO. 01, NARAYANPUR,
P.S. NARAYANPUR, DIST. LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE ASSISTANT/ADDITIONAL PP, GOVT. OF ASSAM

Advocate for the Petitioner : MR. S D ROY

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

18.10.2023

Heard Mr. S.D. Roy, learned counsel for the accused and also heard Mr. P. Borthakur, learned Additional Public Prosecutor, Assam, appearing for the State

respondent.

2. This application, under section 439 Cr.P.C. is preferred by accused, namely, Hemendra Sarmah, who has been languishing in jail hazot since 20.09.2023, in connection with North Lakhimpur P.S. Case No.340/2023, under Section 384 IPC, for grant of bail.

3. It is to be noted here that the above noted case has been registered on the basis of an FIR lodged by one Abinash Deka on 19.09.2023. The essence of allegation made in the aforesaid FIR is that the mother of the informant Smt. Padumi Deka had purchased a plot of land measuring 1 katha 15 lechas from one Kanaklata Saikia of Tinikuria Sonari Revenue village and thereafter, they approached the accused, namely, Hemendra Sarmah, who is the Lat Mondal of Tinikuria Sonari Revenue village, under North Lakhimpur Mouza for mutation and the Lat Mondal had demanded a sum of ₹ 1,00,000/- and received a sum of ₹ 50,000/- on 13.07.2023, through Google Pay. But, even after receiving the said amount of ₹ 50,000/-, the Lat Mondal did not complete the mutation and again demanded ₹ 50,000/- for the said work.

4. Mr. Roy, learned counsel for the accused, submits that the accused was arrested on 20.09.2023, and since then he is behind the bar for last 28 days and that while causing arrest of the accused, the I.O. has failed to comply with the provision of Section 41A of the Cr.P.C. as mandated by Hon'ble Supreme Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation & Anr.** reported in **2022 LiveLaw (SC) 577**, and considering the aforesaid two aspects, Mr. Roy contended to allow this petition.

5. On the other hand, Mr. P. Borthakur, learned Additional Public Prosecutor has produced the case diary before this Court and submits that the I.O. has given explanation for not issuing notice under Section 41(A) Cr.P.C. to the accused before his arrest and that in view of the explanation, so forthcoming from the I.O. as available in the case diary, issuance of notice under Section 41A Cr.P.C. is not mandatory and that there are sufficient materials to show complicity of the accused with the offence alleged in the FIR and the I.O. having checked the bank account of the informant found that a sum of ₹ 50,000/-

was debited from his account and deposited in the account of the accused and that the payment was made through Google Pay and the I.O. has sufficient reasons to believe in commission of the offence and further Mr. Borthakur submits that the accused was working at the relevant point of time as a Lat Mondal of Tinikuria Sonari Revenue village, and Section 7/7(A)/8 of the Prevention of Corruption Act are also added vide order dated 09.10.2023, of the learned Chief Judicial Magistrate, North Lakhimpur and therefore, Mr. Borthakur contended to dismiss the petition.

6. Having heard the submission of learned Advocates for 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 P.P.

7. The case diary indicates that the I.O. has collected sufficient incriminating materials against the accused in support of the allegation made in the FIR. It appears that the accused has received a sum of ₹ 50,000/- through Google Pay from the informant. It also appears that the I.O. had not issued notice under Section 41A of Cr.P.C. to the accused before his arrest. And nothing has been indicated in the forwarding report as to why the Section 41(A) Cr.P.C. notice was not given to the accused before causing his arrest.

8. I have considered the submission of learned Advocates of both the parties and also carefully gone through the decision of the Hon'ble Supreme Court in **Satender Kumar Antil** (supra). It appears that in paragraph 21 of the aforesaid decision, it has been held as under:-

"21. Section 41 under Chapter V of the Code deals with the arrest of persons. Even for a cognizable offense, an arrest is not mandatory as can be seen from the mandate of this provision. If the officer is satisfied that a person has committed a cognizable offense, punishable with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offense, and there is a necessity for an arrest. Such necessity is drawn to prevent the committing of any further offense, for a proper investigation, and to prevent him/her from

either disappearing or tampering with the evidence. He/she can also be arrested to prevent such person from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the court or to the police officer. One more ground on which an arrest may be necessary is when his/her presence is required after arrest for production before the Court and the same cannot be assured.

23. The consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offense. Resultantly, while considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance of this provision. Any non-compliance would entitle the accused to a grant of bail.

Again in the paragraph 73 of the said decision, the Hon'ble Supreme Court has held as under:-

73. In conclusion, we would like to issue certain directions. These directions are meant for the investigating agencies and also for the courts. Accordingly, we deem it appropriate to issue the following directions, which may be subject to State amendments.:

- a) The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.
- b) The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41A of the Code and the directions issued by this Court in **Arnesh Kumar** (supra). Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.
- c) The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non-compliance would entitle the accused for grant of bail.

.....”

9. Here in this case, it is not in dispute that the I.O. has not issued 41A notice to the accused before his arrest. Having gone through the provision of Section 41A Cr.P.C. and also the direction issued by the Hon'ble Supreme Court as well as the length of detention (28 days), this Court is of the view that a prima facie case for granting bail to the accused

is made out. And accordingly, it is provided that on furnishing a bond of ₹ 50,000/- (Rupees Fifty Thousand) with one surety of like amount, to the satisfaction of the learned Chief Judicial Magistrate, North Lakhimpur, the accused be enlarged on bail.

10. In terms of above, this petition stands disposed of. The case diary be returned.

Sd/- Robin Phukan
JUDGE

Comparing Assistant