

GAHC010224102023



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

Case No. : Bail Appln./3605/2023

PUSHKAL GOGOI
S/O LT. PRADIP GOGOI
R/O IRIHULA VILLAGE, P.S. MORAJHAT P.O. MORAN, DIST. DIBRUGARH,
ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A M BORA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

17.10.2023

Heard Mr. A.M. Bora, learned Sr. 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 **Pushkal Gogoi** 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.M. Bora, learned Sr. counsel appearing for the accused petitioner, submits that the accused petitioner prior to his arrest was posted as the Dy. Superintendent of Police (DSP) in Bajali district and that he has been languishing in jail for 44 (forty four) days without committing any offence as alleged in the F.I.R., which was lodged after 40 (forty) days of the alleged incidents. Mr. Bora further submits that the accused petitioner has undergone extensive interrogation in police custody for 10(ten) days in connection with the case. It has been submitted that it is falsely alleged that the accused petitioner on the night of 16.07.2023 conducted search in the house of the informant and recovered a sum of Rs.1 lakh along with some foreign currency notes and other items, which do not find place in any seizure memo as well as that he demanded a sum of Rs.5 lakhs from the informant. Mr. Bora, learned Sr. Counsel, submits that the accused petitioner has been arrested based on the statements of co-accused persons which is not admissible in law. According to Mr. Bora, apart from the bailable penal provisions of Sections 323/506 of the IPC (though not admitting) no other penal provisions under which the case has been registered can be attributed to him. Mr. Bora, therefore, submits that the accused petitioner may be directed to be released on bail in connection with the case.

5. Opposing the bail application, Mr. M. Phukan, learned Public Prosecutor, submits that the case diary reveals, *inter alia*, that the accused petitioner, who is a senior police officer, assaulted the informant physically in the name of search for drugs and cash money and then confined him into a room and demanded

Rs. 5 lakhs from the informant threatening him to kill unless the demand was fulfilled and to implicate him in false case. Therefore, Mr. Phukan submits that in the backdrop of prima facie evidence so far collected by the investigating officer, the liberty of bail, if granted to the accused petitioner will certainly hamper a fair investigation into the case.

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 04.09.2023, that is, for 44 days.

8. A perusal of the case diary prima facie reveals that the accused petitioner, who is a district level senior police officer, entered into the dwelling house of the informant on the pretext of searching for some drugs without following the prescribed procedure for house search and registering any case. It is further revealed that the accused petitioner assaulted the informant physically demanding Rs.5 lakhs and made an attempt to implant contraband drugs in his

house. It is further revealed that on the night of conducting house search on 16.07.2023, he took away cash and other valuable articles such as mobile phones, ATM cards, bank passbooks, PAN card, Adhaar card etc. without preparing proper seizure memo at the spot. The accused petitioner, it is revealed from the case diary, conducted searches even at the private office of the business establishment of the informant and in the house of his in-laws without registering any case and without any warrant and thereafter, detained the informant illegally without lawful authority till the afternoon of 17.07.2023. Ex facie such conduct on the part of the accused petitioner indicated his criminal intentions for wrongful personal gain. The investigation is, of course, yet to be completed.

9. 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 in the district of Bajali, Assam, 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.

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

Return the case diary.

This disposes of the bail application.

JUDGE

Comparing Assistant