

GAHC010226402023



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

**Case No. : AB/3417/2023**

BISWAJYOTI DEB ROY  
S/O LATE BISHNUPADA DEB ROY  
R/O VILL- GANDHI NAGAR  
P.O. NETAJINAGAR  
P.S. RAMKRISHNA NAGAR,  
DIST. KARIMGANJ, ASSAM  
PIN-788166

VERSUS

THE STATE OF ASSAM  
REP. BY THE PP, ASSAM

**Advocate for the Petitioner : MR. R ALI**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**HON'BLE MR. JUSTICE ROBIN PHUKAN**

**O R D E R**

**18.11.2023.**

Heard Mr. T.J. Mahanta, learned Senior Counsel assisted by Mr. R. Ali, learned counsel for the applicant and also heard Mr. K. Baishya, the learned Addl. Public Prosecutor, for the State respondent.

**2.** Apprehending arrest in connection with **Ramkrishna Nagar P.S. Case No.90/2023**, under section **409 IPC**, this second application,

under Section 438 of Cr.P.C., is preferred by applicant **Sri Biswajyoti Deb Roy, Secretary of Gandhigram GPSS**, for grant of pre-arrest bail. The earlier anticipatory bail application, being AB.No.2567/2023 was rejected by this Court vide order dated-23.08.2023.

**3.** It is to be noted here that the above noted case has been registered on the basis of one FIR lodged by one Shamshul Hoque Mazarbhuyan, Inspector, Food Civil Supplies & Consumer Affairs, Karimganj, on 12.06.2023.

**4.** The brief fact leading to registration of above noted case is that the complainant had received a complaint from one Saurav Das against the applicant on following counts:-

- (i) That the applicant, being the Secretary of Gandhigram GPSS, he used to run the Society without a joint account in the name of the President and Secretary and used to operate the account himself;
- (ii) The office of the Society is being operated from his own residence, causing inconvenience to the general public;
- (iii) He used to take Rs. 13/ to 14/ per quintal rice from the dealers;
- (iv) He used to take 650 grams of NFSA rice, per bag from the dealers;
- (v) He never issued commission of Mid day meal rice to the dealers;
- (vi) He used to take Rs.13/ per quintal from the Agents as

carrying charge;

Accordingly, the complainant and one Sanjoy Goswami, Inspector, Food Civil Supplies & Consumer Affairs, Karimganj visited Gandgigram GPSS to ascertain the veracity of the said complaint and he found prima-facie case of violation of Clauses 14, 19, 20, and 26 of Assam Public Distribution Articles Order, 1982 and also violation of terms and condition of Licence and commission of criminal breach of trust, against the applicant.

**5.** Mr. T.J. Mahanta, learned counsel for the applicant submits that though the case has been registered under section 409 IPC, yet, said section is not attracted here in this in as much as the applicant is the Secretary of a Co-operative Societies and as per decision of this court in **Sambhu Nath Dey vs. The State of Tripura & Anr.**, reported in **(1986) 2 GLR (NOC)**, the Secretary of Co-operative Societies is not a public servant as defined in section 21 IPC. Further Mr. Mahanta submits that in the earlier order this Court has considered transfer of money by the applicant from the account of the Society to his account, yet, the said amount was transferred to his account as the said amount was due to his father, who had invested the said amount in the Society and it was allowed by the Board on an application filed by him and his brother, sister and mother. Mr. Mahanta further submits that the FIR was filed by a person who has been elected as Member of the Board of Directors of the GPSS and that allegations made in the FIR are false and fabricated and made with mala-fide intention. It is the further submission of Mr. Mahanta that there is no bar in running the Office of the Society from his residence and that as per norms the Secretary can

charge some amount per bag of rice and that he is ready to co-operate with investigating agency and his custodial interrogation is not required and therefore, Mr. Mahanta contended to allow this petition.

**6.** Per contra, Mr. K. Baishya, the learned Addl. P.P. has vehemently opposed the petition. Producing the Case Diary before this court Mr. Baishya submits that the I.O. has collected sufficient materials to show the complicity of the applicant with the offences alleged in the FIR. Mr. Baishya further submits that there is material to show that apart from the entitled amount the applicant has transferred more amount of money from the account of the Society to his account. Therefore, it is contended to dismiss this petition.

**7.** 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. Baishya, learned Addl. PP.

**8.** It is to be mentioned here that section 409 IPC deals with Criminal breach of trust by public servant, or by banker, merchant or agent. The section read as under:- “***Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.***”

**9.** Thus, a bare perusal of the section reveals that it not only refers to public servant or banker, but also it refers to merchant, factor, broker,

attorney or agent. It is a fact that the applicant is neither a public servant nor a banker. Mr. Mahanta has rightly pointed this out and the case law referred by him also supported his strengthened his submission and therefore, this Court is inclined to record concurrence to the same. But, given the purpose of co-operative societies and also the nature of business they are engaged into, it cannot be said that they are not a 'merchant' or 'factor'. A 'merchant' is a person who travels to remote countries, also anyone dealing in purchase and sale of goods. And a 'factor' is a mercantile agent who in the customary course of his goods, wares or merchandise for sale on commission.

**10.** The case diary indicates that the I/O has collected sufficient incriminating materials in support of the allegation made in the FIR and there is material to show that the applicant has been running the Society from his residence and he has been operating single bank account and on several occasions he had transferred money from the account of the Society to his account, besides the amount he and his family members are entitled to. There are also materials to show that he had charged additional amount of Rs.13/ to 14/ from the Fair Price Shop dealers against transportation cost. Further, it appears that the investigation is going on and the applicant has not been co-operating, with the investigating agency, rather he has been absconding.

**11.** It is to be noted here that what are the factors to be taken into account while granting anticipatory bail has been laid by Hon'ble Supreme Court in the case of ***Siddharam Satlingappa Mhetre vs. State of Maharashtra and others***, reported in ***(2011) 1 SCC 694***, in para 112, as follows:

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii. The possibility of the applicant to flee from justice;
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be

considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

**12.** Bearing these principles in mind, while the facts and circumstances of the case in hand are examined, this Court is unable to agree with the submissions advanced by Mr. Mahanta, learned Senior Counsel for the applicant. Given the nature and gravity of the offence, and the punishment prescribed for the same, and also in the interest of investigation, custodial detention of the applicant seems to be indispensable.

**13.** In the result, striking a balance between the individual right of the applicant and with the societal interest, this Court is of the view that this is not a fit case where the privilege of pre arrest bail can be extended to the applicant and therefore, the petition stands rejected. The case diary be returned.

**JUDGE**

**Comparing Assistant**