

GAHC010228872023



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

Case No. : AB/3440/2023

ABDUL ODUD CHOUDHURY
S/O LATE ABDUS SUKKUR
CHOUDHURY
R/O VILL- BAHADURPUR PART-I,
P.O. RANGAUTI, P.S. HAILAKANDI
DIST. HAILAKANDI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR M J QUADIR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

12.12.2023

Heard Mr. H.R.A. Choudhury, learned Senior Counsel, assisted by Mr. M.J. Quadir, learned counsel for the petitioner. Also heard Ms. A. Begum, learned Additional Public Prosecutor, appearing for the State of Assam.

This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Abdul Odud Choudhury, who is apprehending his arrest in connection with Hailakandi P.S. Case No. 216/2023 under Section 120B/420/409/468/380 of the Indian Penal Code read with Section 7 of the Essential Commodities Act, 1955.

The gist of accusation against the present petitioner is that on 26.08.2023, one Jakir Hussain Laskar MLA-cum-Chairman, Vigilance Monetary Committee, lodged an FIR before the Superintendent of Police, Hailakandi against the Secretary and Chairman of the Nitainagar Gaon Panchayat Samabai Samitee Ltd., *inter-alia*, alleging that the accused persons named in the FIR, including the present petitioner had misappropriated one 1141.4 numbers of bags which were found missing from the godown of Nitainagar Gaon Panchayat Samabai Samitee.

Learned Senior Counsel for the petitioner has submitted that in this case there are two accused persons named in the FIR, namely, the present petitioner, who is the secretary of the Gaon Panchayat Samabai Samitee Ltd. and another accused, who is the chairman of the Nitainagar Gaon Panchayat Samabai Samitee Ltd.

It is submitted by the learned Senior Counsel for the petitioner that in the meanwhile, the co-accused, who is the chairman of the Nitainagar Gaon Panchayat Samabai Samitee Ltd. has already been granted an anticipatory bail by this Court in A.B. Case No. 3600/2023.

It is also submitted by the learned Senior Counsel that the FIR was lodged by the first informant on the basis of an enquiry report of an

enquiry conducted by the Additional Deputy Commissioner Food & Civil Supply & Consumer Affairs, Hailakandi, wherein, it was shown that on 24.08.2023, where the enquiry was conducted the total number of rice bags which were shown to be lifted by Nitainagar Gaon Panchayat Samabai Samitee Ltd. and Mohanpur Gaon Panchayat Samabai Samitee and total numbers of stock which was found to be present on inspection shows a deficiency of 1141.4 bags. However, the learned Senior Counsel further submits that these bags which were found to be deficient were already disbursed to the beneficiaries by the Nitainagar Gaon Panchayat Samabai Samitee Ltd. and in support of his submissions the Learned Senior Counsel for the petitioner has pointed towards the additional affidavit sworn by the present petitioner which is supported by documents showing the disbursement of the rice bags which is found to be deficient to the targeted beneficiaries.

Learned Senior Counsel for the petitioner has also submitted that considering the fact that co-accused has already been granted anticipatory bail and also considering the fact that there are documents with the petitioner to show that the bags of rice which were shown to be deficient have already been disbursed among the beneficiaries, hence, this is not a case of custodial interrogation during investigation.

Hence, he prays for an order under Section 438 of the Code of Criminal Procedure, 1973.

On the other hand, learned Additional Public Prosecutor, Assam has opposed the grant of bail to the present petitioner on the ground that the petitioner has been specifically named in the FIR along with the other co-accused having indulged in misappropriation which has been alleged

against him.

I have considered the submission made by learned counsel for both the sides and have gone through the materials on record including the case diary of Hailakandi P.S. Case No. 216/2023.

Considering the fact that one of the named co-accused in the FIR has already been granted anticipatory and also considering the fact that the petitioner has furnished a copies of documents showing the deficient amount of the rice on the basis of which an FIR has been lodged against him has already been disbursed to the beneficiaries, this Court is of the considered opinion that the custodial interrogation of the present petitioner may not be necessary if he otherwise co-operates in the investigation.

In view of above, the petitioner, namely, Abdul Odud Choudhury, is hereby directed to appear before the Investigating Officer of Hailakandi P.S. Case No. 216/2023 within a period of 10(ten) days from the date of this order and co-operate in the investigation. If he does so within the stipulated period of time, in the event of his arrest in connection with Hailakandi P.S. Case No. 216/2023, the above named petitioner shall be allowed to go on interim bail of Rs. 30,000/- with a suitable surety of like amount to the satisfaction of the arresting authority, subject to the conditions that:-

(i) the petitioner shall co-operate in the investigation; and

(ii) the petitioner shall not directly or indirectly make any inducement threat or promise to the informant or to any other persons who may be acquainted with the facts of the case so as to dissuade such

person from disclosing such facts before the Investigating Officer or to any Court.

With the above observation, this bail application is hereby disposed of.

JUDGE

Comparing Assistant