

GAHC010241612023



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

Case No. : AB/3617/2023

SRI RAJESH BAJAJ AND ANR
S/O JUGLA KISHORE BAJAJ DIRECTOR

M/S NORTH EAST PLANTATIONS AND COMMERCIAL (P) LTD. HAVING ITS
OFFICE AT 2ND FLOOR
ROYAL CIRCLE
R.G. BARUAH ROAD

GUWAHATI-781005
ASSAM AND
R/O HENGERABARI
GUWAHATI-781036
KAMRUP (METRO)
ASSAM

2: SRI KISHOR BAJAJ
S/O JUGAL KISHORE BAJAJ

DIRECTOR
M/S NORTH EAST PLANTATIONS AND COMMERCIAL (P) LTD. HAVING ITS
OFFICE AT 2ND FLOOR
ROYAL CIRCLE

R.G. BARUAH ROAD
GUWAHATI-781005
ASSAM AND R/O DR JAKIR HUSSAIN PATH

SARUMATARIA
HENGABARI
GUWAHATI-781036
KAMRUP (M)
ASSAM
VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP
ASSAM

2:THE ASSAM CO-OPERATIVE APEX BANK LTD.
REP. BY ITS MANAGING DIRECTOR

HAVING ITS OFFICE AT PAN BAZAR
GUWAHATI-781001
KAMRUP (METRO)
ASSAM

Advocate for : MR. A CHAMUAH
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 17.11.2023

Heard Mr. K.N. Choudhury, learned Senior counsel assisted by Mr. O.P. Bhati, learned counsel for the petitioners. Also heard Mr. M. Phukan, learned Public Prosecutor for the State.

2. This is an application made under **Section 438 Cr.P.C.**, seeking pre-arrest bail by the petitioners, namely, **Rajesh Bajaj and Kishor Bajaj**, apprehending arrest in connection with **BI(EO) P.S. Case No. 31/2023**, registered under **Section 120B/420/406/409/119 IPC**.

3. The brief facts of the case is that the Chairman of Assam Co-operative Apex Bank Ltd. lodged an FIR before the Director, Bureau of Investigation (E.O.) Government of Assam, stating *inter alia* that a report of financial fraud was committed in the Dispur Branch of Assam Co-operative Apex Bank Ltd. by M/s North East Plantations & Commercial (P) Ltd. in the period between 05.04.2023

to 30.06.2023 by irregularly discounting 8(eight) numbers of cheques in connivance with certain officials of the said bank thereby fraudulently withdrawing a total amount of Rs.20,30,00,000/-(Rupees Twenty Crores Thirty Lakhs) at the expense of public deposit held with the bank causing acute loss to the bank's exchequer as well as loss of public confidence on security of their deposits held with the bank.

4. It is further stated in the FIR that M/s Northeast Plantations and Commercial Private Limited where the petitioner No.1 Rajesh Bajaj is the director has remained a customer of the said bank since the year 2008. It is alleged that during the period from 05.04.2023 to 30.06.2023, the Director of the said firm with the help of certain officials of the bank fraudulently discounted 8(eight) numbers of cheques, totaling an amount of Rs. 20,30,00,000/-(Rupees Twenty Crores Thirty lakhs) through Dispur Branch of the Apex bank in gross misuse of an obsolete Demand Bill Purchase(DBP) facility, thereby committing a fraud and also cheating the bank at the expense of public deposits held with the bank. Subsequently, the petitioner No.1 returned an amount of Rs.80,00,000/-(Rupees Eighty Lakhs) only to the bank and has shown no intent to return the remaining amount of Rs.19,50,00,000/-(Rupees Nineteen Crores Fifty Lakhs) to the bank.

5. After the matter came to the notice of the informant, instructions were given to conduct an official level inquiry into the matter and on the basis of the outcome of the inquiry, the concerned branch manager of Dispur Branch Sri Bikash Ranjan Das was placed under suspension and maximum efforts are being made to recover the defrauded amount which subsequently resulted in filing an FIR at Dispur police Station.

6. Mr. Choudhury, learned Senior counsel for the petitioners has submitted

that the petitioner No.1 took the loan on behalf of his company for completion of the construction of eleven numbers of District Science Centers in different districts of Assam allotted at a bid price of Rs.90,50,51,000/-(Rupees Ninety Crores Fifty Lakhs and Fifty One Thousand) during the middle of the year of 2019 vide order of Chief Engineer PWD(Building). For completion of the said work, the petitioner No.1 took the loan from the informant bank against sufficient collateral security which is not less than 30 crores by mortgaging his various immovable properties situated in Noida and Delhi. It is further submitted that by the time, the work more than 30 crores has already been completed but no payment has been made to the petitioner No.1 by the said department. As soon as the petitioner No.1 received the payment the liability of the bank would be discharged by him.

7. According to learned Senior counsel for the petitioners that the loan taken by the petitioner No.1 from the informant's bank has been invested by him in carrying out his construction work and due to non receipt of the payment, he failed to make any payment to the concerned bank for which criminal case cannot be initiated against him.

8. It is also the submission of learned Senior counsel for the petitioners that the alleged offences entirely based on the documents which are in possession of the informant's bank and no further documentary evidence are required to be collected and in view of that matter, the custodial interrogation of the petitioners is not necessary.

9. In response, Mr. Phukan, learned Public Prosecutor for the State has pointed out that the matter involves allegation of financial fraud in the bank. The petitioner No. 1 i.e. Rajesh Bajaj, Director of M/s North East Plantations & Commercial (P) Ltd. has committed such financial fraud with the help of some

officials of the Assam Co-operative Apex Bank of Dispur Branch. On the prayer of the petitioner No.1, the amount was disbursed in favor of the company of the petitioner No.1 i.e. M/s North East Plantations & Commercial (P) Ltd. without maintaining any banking norms. The petitioner No. 1 filed an application seeking DBP for crores of rupees but though money was released in favour of the company of the petitioner No. 1 but there was no any visible vouchers so prepared relating to issue/transactions of DBP. But the Branch had not prepared any voucher for the transactions of the said DBPs. The entries have been made found in the system directly. All the entries relating to issue of the said DBPs were found entered and authorized by the Branch Manager and other officials of the said bank.

10. It is also the submission of learned Public Prosecutor that to facilitate the directors of M/s North East Plantations & Commercial (P) Ltd. and to take undue advantage of getting more than 20 crore as DBP, the then Branch Manager has violated the administrative circular of the bank. Since all those cheques were found undated and were incomplete, so discounting of those cheques are totally illegal.

11. Learned Public Prosecutor also contended that both the petitioners being the directors of M/s North East Plantations & Commercial (P) Ltd. have been a pre concept design in connivance with bank officials had taken undue benefit of DBP discount by submitting personal cheques of Rajesh Bajaj for which their company was not eligible and thereafter misappropriated an amount more than 20 crores from the bank.

12. On the last limb of argument, learned Public Prosecutor has submitted that since the name of Rajesh Bajaj and his brother has come out during investigation, their interrogation might also be required for the interest of the

case. The investigation is still going on and at the nascent stage of investigation, the learned Public Prosecutor has opposed in granting bail to the petitioners.

13. In support of his submission, the learned Public Prosecutor for the State has placed reliance on the following case laws-

- (i) Nimmagadda Prasad v. Central Bureau of Investigation reported in (2013) 7 SCC 466.
- (ii) Alagarsamy & Ors. v. State represented by Deputy Superintendent of Police, Madurai, reported in (2010) 12 SCC 427.

14. I have considered the submissions made by the learned counsel for the parties. I have also perused the case diary.

15. On perusal of the case diary, it reveals that the petitioners have applied for DBP for huge amount of money. The cheques were found without mentioning any date. It also appears that the petitioner No. 1 played major role for committing the financial fraud with the connivance of the Bank employees and investigation is not yet completed and it is a serious fraud against the financial institution.

16. Though it was suggested by learned Senior council that the petitioners are ready to sell/mortgage their property with a view to pay the loan amount, but there are allegations to the effect that the DBP loan amounts were directly credited to the account of M/s North East Plantations & Commercial (P) Ltd. by violating the banking norms as well as the administrative circular of the bank.

17. Prima facie it does not appear to be a case of the failure on the part

of an enterprise to repay the loan availed from the bank. On the contrary, if the attendant circumstances are cumulatively considered, a fraudulent intention is manifest from the inception of the sanction of the loan to the petitioners and his company.

18. For the foregoing reasons, this Court impelled to hold that a clear case of fraud is prima facie made out. Such financial frauds deserve to be properly investigated to unmask the identity of the persons privy thereto, the real beneficiaries of the fraud and if possible, trace the money which has been siphoned off. Custodial interrogation of the petitioners is, therefore, warranted.

19. It is clarified that the observations made aforesaid are confined to determine entitlement of pre-arrest bail only. In an overview of the matter, this Court is of the considered view that the petitioners are not entitled to the concessions of pre-arrest bail. Hence, prayer for pre-arrest bail is **rejected** accordingly.

20. The pre-arrest bail application stands disposed of.

21. Return the case diary.

JUDGE

Comparing Assistant