

GAHC010251862023



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

Case No. : AB/3789/2023

ABDUR RAZZAQUE
S/O CHAND MIYA
R/O BARPETA ROAD TOWN,
WRONGLY WRITTEN AS KATAGHAR PATTHAR, WARD NO. 05, P.O. AND P.S.
BARPETA, ASSAM, PIN 781301, INDIA.
MOBILE NO. 9435123053

VERSUS

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

2:NEW TAIBA TOURS AND TRAVELS

REP. BY SRI ANWAR AHMAD KHAN
AGED ABOUT 76 YEARS

S/O ABDUL SATTAR KHAN
R/O RANGDO KA PUL

JATAV NAGAR
P.S. MANI
SAHARANPUR
UTTAR PRADESH.
MOB. NO. 983730140

Advocate for the Petitioner : MR. M U MAHMUD

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

ORDER

Date : 18-11-2023

1. Heard Mr. M.U. Mahmud, learned counsel for the petitioner. Also heard Ms. A. Begum, learned Additional Public Prosecutor, Assam.
2. The petitioner Abdur Razzaque has filed this application under Section 438 Cr.P.C. with prayer for interim bail for a limited period in connection with Case No.22532/2021 registered under Section 138 of the NI Act, 1882 pending in the Court of learned Additional Judge, Saharanpur, Uttar Pradesh.
3. The respondent No.2 Sri Anwar Ahmed Khan representing New Taiba Tours & Travels is the complainant and has alleged that the petitioner owes him an amount of Rs.6,40,000/- and to repay the amount, the petitioner issued a cheque bearing number 000223 dated 20.06.2021 through Account No.16442020000222, HDFC Bank, Station Road, Ward No.05, Barpeta Road in the name of the complainant's agency New Taiba Tours & Travels. On 20.06.2021, the complainant deposited this cheque in his bank account of the Bank of Baroda, Dehradun Road, Saharanpur Account No.00810200000824 which was dishonoured with comments that funds were insufficient. The complainant received the return memo on 03.07.2021. The complainant then issued a demand notice through his advocate through registered post on 09.07.2021 which was received by the petitioner on 24.07.2021. The petitioner has not yet paid the amount. The complainant – respondent No. 2 herein then lodged a complaint petition which was registered as Case No.22532/21. This case at present is pending in the Court of the 31/Additional Judge, Saharanpur, Uttar Pradesh.
4. It is submitted that the petitioner is 65 years old and he is apprehending arrest in connection with this case. He will suffer immensely if he is forwarded to custody. The petitioner has obtained some relevant papers from the Court where the aforementioned case is pending. These documents are marked as Annexure 2 and 3 of the petition. The case history depicts that several dates were fixed in connection with this case but the petitioner did not receive any summons or warrant of arrest issued against him. Annexure-3 reveals that warrant has been issued against him and thereafter a proclamation under Section 82 of the Cr.P.C. has been issued against the petitioner. It is submitted that there are no fetters for another High Court in exercising power under Section 438 Cr.P.C. in granting anticipatory bail for a

limited period to enable the applicant to move the appropriate Court. Although the petitioner is booked under bailable offence yet as warrant and proclamation has been issued against him, he is apprehending arrest in connection with this case.

5. The learned Addl. P.P. has raised objection stating that entertaining this bail application and passing bail orders therein by this Court, might be deemed an overreach, and the order passed would be without jurisdiction. The learned Addl. P.P. has prayed to reject the bail petition, more so when the offence alleged is a bailable offence and petition u/s 438 Cr.PC is not maintainable in a bailable offence.

6. I have carefully scrutinized the documents furnished along with the petition. The petitioner has relied on the decision of the High Court of judicature at Bombay in *Teesta Atul Setalvad and Another v. State of Maharashtra and Others* in connection with Anticipatory Bail Application No. 14 of 2014, decided on 31.01.2014. It was held that the High Court of one State can grant transit bail in respect of a case registered within the jurisdiction of another High Court in exercise of powers u/s 438 Cr.PC. It appears from the judgment of *Teesta Atul Setalvad (supra)* that there is no fetter on the High Court in exercising the power u/s 438 Cr.PC in granting anticipatory bail for a limited period to enable the applicant to move the appropriate Court. A special leave petition registered as SLP No. 1770 of 2014 was preferred against the order of the High Court of judicature at Bombay in *Teesta Atul Setalvad vs State of Maharashtra and Others* before the Hon'ble Supreme Court. The Hon'ble Supreme Court declined to interfere with the order of the Bombay High Court. It was observed by Hon'ble the Supreme Court that:-

“The matter relates to grant of Anticipatory bail under Section 438 of the Code of Criminal Procedure. The Bombay High Court vide impugned order dated 31st January, 2014 allowed the petitioners to move before appropriate Court in Gujarat for said relief and granted Transit Bail for four weeks so as to enable the petitioner to approach before the appropriate Court at Gujarat. Having heard the learned Counsel for the petitioners, we are not inclined to interfere with the impugned order.

However, taking into consideration the nature of the case and submission made on behalf of the petitioners, we extend the Transit Bail in favour of petitioners upto 31st March, 2014 so as to enable the petitioners to

approach the appropriate Court in Gujarat. If such petition is filed, the appropriate Court in Gujarat will consider the same independently without being influenced by any observation made by the Bombay High Court.

The question of law about jurisdiction of High Court is kept open.

The special leave petition stands disposed of.”

7. I have considered the submissions at the Bar with circumspection and I have also perused the documents submitted along with the petition. An order of proclamation has been issued against the petitioner. I have considered the submission that the petitioner is a 65 year old person. I have also taken a pragmatic view as the petitioner is willing to appear before the learned trial Court and co-operate with the trial. The next date fixed by the learned trial Court is 15.01.2024. I have also relied on the observation of Hon’ble the Supreme Court in connection with the SLP No. 1770 of 2014 against the anticipatory bail order in *Teesta Atul Setalvad (supra)*.

8. In the wake of the foregoing discussions, I deem it proper to pass an order of interim bail u/s 438 Cr.PC with a direction to the applicant to appear before the competent Court for seeking appropriate relief.

9. In the interim and in the event of arrest of the petitioner in connection with Case No. 22532/2021 pending in the Court of the learned Additional Judge, Saharanpur, he shall be released on transit bail on executing a personal bond of Rs. 50,000/- with 2 (two) sureties of like amount to the satisfaction of the arresting authority. This protection is granted only upto 15.01.2024 from the date of this order so as to enable the petitioner to approach the competent Court for seeking appropriate relief.

10. In terms of the above observation, the petition is disposed of.

JUDGE

Comparing Assistant