

GAHC010261552023



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

Case No. : Bail Appln./4237/2023

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

VERSUS

THE STATE OF ASSAM
REP. BY P.P., ASSAM.

Advocate for the Petitioner : MR. A M BORA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

23.11.2023

Heard Mr. B. Bhagawati, learned counsel appearing for the accused petitioner as well as Mr. M. Phukan, qalearned Public Prosecutor, Assam appearing for the State respondent.

2. By this second 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** 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 earlier bail application of the accused petitioner being B.A. No.3605/2023 was rejected by this Court vide order, dated 17.10.2023.

4. The case diary in six volumes is placed before the Court.

5. 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.

6. It is noticed that the accused petitioner has been in judicial custody since 04.09.2023, that is, for 81 days.

7. While rejecting the earlier bail application of the accused petitioner, this Court observed as hereinbelow extracted (relevant portion)-

“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."

8. On perusal of the updated case diary, it is revealed that on 15.07.2023, the accused petitioner, who was the then Deputy Superintendent of Police, Bajali along with his police team, as per the direction of the Superintendent of Police, Bajali went to the residence of the informant Rabiul Islam without properly briefing the members of his team about their task and entered into his house at around 1.30 a.m. midnight by breaking the door and without following the basic procedures for house search. The accused petitioner physically assaulted the informant at his house in the name of search for contraband drugs and cash money as well as confined him into a room and demanded cash amount of Rs.5 lakhs by threatening him of killing and implicating him in a false case. It is revealed from the case diary that when no incriminating material was recovered from the house of the informant, the accused petitioner also tried to bring contraband drugs from his office chamber and tried to implant the said drugs illegally in the house of the informant through his subordinate officials. The accused petitioner picked up the informant and two other persons from his house and also picked up various articles like cash, mobile phones, ATM cards,

bank passbooks, PAN cards, ADHAAR cards, Passport etc. through co-accused police personnel without making proper seizure at the spot. On 16.07.2023 at around 11.56 a.m., the accused petitioner along with co-accused highest officials of Bajali district entered into conspiracy to extort cash and kinds from the informant by putting him in fear of death or killing in encounter. The accused petitioner in connivance with other police officials continued to detain the informant for more than 24 hours without registering any case against him and tortured him physically and mentally in order to extort money from him which is apparent from the CCTV footage and audio clips found in the extracted data of the mobile phone of the accused petitioner.

9. In spite of the above prima facie incriminating material available on the case diary, keeping in consideration the length of detention and substantial progress in investigation, this Court is of the considered opinion that further continuation of detention of the accused petitioner may perhaps be not required.

10. Accordingly, it is provided that the accused petitioner, named above, shall be released on bail of **Rs.1,00,000/- (Rupees One Lakh)** with two sureties of like amount to the satisfaction of the learned **C.J.M., Kamrup(M), Guwahati** subject to the following conditions-

i) That the accused petitioner shall cooperate with the Investigating Officer as and when required; and

ii) That the accused petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Police Officer or the Court.

Return the case diary.

The bail application is disposed of.

JUDGE

Comparing Assistant