

GAHC010273352023



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

Case No. : Bail Appln./4444/2023

AMJAD ALI,
S/O ASHRAF ALI,
R/O H/NO. 10, MILAN PATH,
JURIPAR, PANJABARI ROAD,
P.O. KHANAPARA, P.S. DISPUR, KAMRUP - 781022, ASSAM

--VERSUS --

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

Advocate for the Petitioner : MR. A K BHUYAN

Advocate for the Respondent : PP, ASSAM

- B E F O R E -
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
ORDER

15.12.2023

Heard Mr. A.K. Bhuyan, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor, Assam appearing for the State and Mr. U.J. Saikia, learned counsel for the informant.

2. This application under Section 439 of the Code of Criminal Procedure, 1973

has been filed by the petitioner, namely, Amjad Ali, who has been detained behind the bars since 16.11.2023 in connection with Dispur P.S. Case No.1158/2023 under Sections 420/468/471 of the Indian Penal Code.

3. The gist of accusation in this case is that on 23.06.2023, one Mofida Ahmed had lodged an FIR before the Officer-In-Charge of Dispur Police Station, *inter-alia*, alleging that the brother of the first informant, namely, Ahidur Rahman, who is deceased, was the owner of a plot of land measuring 02 Katha 15 Lechas covered by Dag No.475(old) of Eksania Patta No.5(old) of Revenue Village-Dwaranda, Mouza-Beltola, Circle-Dispur, District- Kamrup (Metro), Assam. It is alleged in the FIR that after the death of the brother of the first informant, the accused Munu Begum along with some other persons tried to trespass into the Assam Type house situated over the aforesaid plot of land and the first informant came to know that the accused named in the FIR has also submitted some forged and fabricated documents in the electricity office for transferring the electricity connection which was in the name of Ahidur Rahman to the name of accused Munu Begum. It is further alleged in the FIR that the accused named in the FIR has submitted an affidavit which is shown to be sworn by Late Ahidur Rahman on 15.03.2022 whereas the brother of the informant, namely, Ahidur Rahman had expired on 03.10.2020.

4. Mr. A.K. Bhuyan, learned counsel for the petitioner has submitted that the petitioner is no way involved in the offence alleged in the FIR. He submits that the petitioner is only the owner of a plot of land adjacent to the land regarding which the dispute was between the first informant and one Munu Begum. Learned counsel for the petitioner has also submitted that after the death of Ahidur Rahman, several persons tried to grab the property of Ahidur Rahman. He submits that in this connection, one Hanufa Begum had lodged an

application under Section 156(3) of the Code of Criminal Procedure, 1973 before the learned Chief Judicial Magistrate, Kamrup (Metro) in which the present petitioner has been named as one of the witnesses. It is further submitted that the police called the present petitioner to the Dispur Police Station on 16.11.2023 and he went to the Dispur Police Station under the impression that he has been called in connection with the petition filed by Hanufa Begum. However, when the petitioner reached the Police Station, he was arrested.

5. Learned counsel for the petitioner has submitted that though the Dispur Police Station Case No.1158/2023 has been registered under Sections 420/468/471 of the Indian Penal Code, the maximum punishment prescribed under the above provisions of law is 7(seven) years and therefore, it is submitted by the learned counsel for the petitioner that it was mandatory on the part of the Investigating Officer to follow the guidelines of the Hon'ble Apex issued in the case of *Arnesh Kumar Vs. State of Bihar*, reported in (2014) 8 SCC 273. As there is no indication that any notice under Section 41 A of the Code of Criminal Procedure, 1973 was issued to the petitioner, the petitioner is entitled to get bail on that count only. Learned counsel for the petitioner has also submitted that the petitioner has been detained behind the bars for last 30 days and considering his detention period also, the petitioner may be allowed to go on bail.

6. On the other hand, Mr. D. Das, learned Additional Public Prosecutor, Assam has vehemently opposed the grant of bail to the present petitioner at this stage of investigation. He has produced the case diary of Dispur P.S. Case No.1158/2023 and has submitted that from the materials available in the case diary, it appears that the petitioner is the kingpin of the entire planning and commission of the forgery as alleged in the FIR. It is also submitted by him that

it is the present petitioner who took Munu Begum to the deed writer and thereafter, a forged deed was executed.

7. Learned Additional Public Prosecutor has also submitted that as the deed writer is yet to be examined by the Investigating Officer and some important witnesses are also yet to be examined, therefore, at this stage, the bail may not be granted to the present petitioner.

8. Mr. U.J. Saikia, learned counsel for the informant has also opposed the grant of bail to the petitioner at this stage on the ground that the petitioner has involved in planning and executing the offence which has been alleged against the co-accused Munu Begum in the FIR and there is every possibility of the petitioner involving in the racket of committing similar offence.

9. I have considered the submissions made by the learned counsel for both the sides and have perused the case diary of Dispur P.S. Case No.1158/2023. The submissions made by the learned counsel for the petitioner that even though all the offences alleged in this case prescribe punishment for less than 7(seven) years, still no notice under Section 41A was issued against the present petitioner and moreover, the guidelines issued by the Hon'ble Apex Court in the case of *Arnesh Kumar Vs. State of Bihar* (supra) has not been complied with, becomes relevant.

10. Though there are incriminating materials in the case diary against the present petitioner, however, considering the period of detention as undergone by the present petitioner as well as considering the fact that in this case there has been total disregard to the guidelines issued by the Hon'ble Apex Court in the case of *Arnesh Kumar Vs. State of Bihar* (supra), this Court is of the considered opinion that the petitioner, Amjad Ali, may not be detained any

further for the sake of fair investigation of this case.

11. Hence, in view of above, the petitioner, namely, Amjad Ali is hereby allowed to go on bail of Rs.30,000/- (Rupees thirty thousand) with a suitable surety of like amount, subject to the satisfaction of the learned Chief Judicial Magistrate, Kamrup (Metro) with the following conditions:-

- i. That the petitioner shall not directly or indirectly make any inducement, threat or promise to the informant or to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts of the case before the Investigating Officer or Police Officer or to any Court.
- ii. That the petitioner after release on bail shall appear before the Investigating Officer as and when required and shall co-operate in the investigation.

12. With the above observation, this bail application is accordingly disposed of.
Send back the case diary.

JUDGE

Comparing Assistant