

GAHC010291172023



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

Case No. : AB/4318/2023

NITUL CHANDRA DAS
S/O. LT. PHATIK DAS,
R/O. KHARGULI, NEAR BORTHAKUR CLINIC HOSPITAL, P.S- LATASHIL,
DIST.- KAMRUP (M), ASSAM.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP, ASSAM

Advocate for the Petitioner : MR P SHARMAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 22.12.2023

Heard Mr. P. Sharmah, learned counsel for the petitioner. Also heard Mr. P. S. Lahkar, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 438 of the Code of Criminal Procedure, 1973, praying for pre-arrest bail anticipating arrest by police in cases registered with various police stations.

3. It is submitted by the learned counsel for the petitioner, Mr. Sharmah, that presently, the accused/petitioner is behind the bar in connection with Cyber P.S. Case No. 12/2023 since 24.11.2023, wherein the petitioner was thoroughly interrogated by the Cyber Police and he was in the police custody for about 13 days. The petitioner was also shown arrest in connection with Garchuk P.S. Case No. 325/2023, under Sections 120B/467/ 468/447 of the Indian Penal Code on 12.10.2023 and he was again arrested in connection with Fatasil Ambari Police Station and was thoroughly interrogated by the police keeping him 2 (two) days in police custody and presently he is in judicial custody. But he has the apprehension that he may be arrested in connection with various other cases in different police stations under Kamrup(Metro) as he was an employee in the Office of Sub-Registrar, Kamrup (Metro) and was working as in-Charge of different official capacities. Thus, his custodial interrogation will not be required in other cases though there is an apprehension of shown arrest by the accused/petitioner in other cases in various police stations with the same set of allegations of forgery of documents and land grabbing.

4. The learned counsel for the petitioner further submitted that the cases against the present accused/petitioner relates to land grabbing and basically the allegation brought against him is land grabbing which is to be dealt by Special Tribunal and in Criminal Reference Case No. 01/17, the Division Bench of this

Court had held that the land grabbing cases should be transmitted to Special Tribunal constituted for the cases of land grabbing. The petitioner is still ready and willing to co-operate with the police if he is interrogate in the jail custody and he will also co-operate with the investigating agency if he is also arrested in connection with other cases, but he prayed for a protection so that he could not be arrested by police in cases of different police stations without giving any notice or without giving any chance of hearing him before his arrest. Accordingly, he sought for pre-arrest bail though he is presently in the judicial custody.

5. The learned counsel for the petitioner further relying on a decision of Hon'ble Bombay High Court in **Amar S. Mulchandani Vs. The State of Maharashtra (Anticipatory Bail Application No. 2801 of 2023)** submitted that there cannot be any bar to seek for an anticipatory bail if the person is in judicial custody. Accordingly, the learned counsel prayed that in the interim, the accused may be protected and not to be arrested in connection with other cases till the disposal of the present petition in connection with cases at various police stations, i.e. Azara, Basistha, Bhangagarh, Bharalumukh, BIEO, Chandmari, Chaygaon, CID, Dispur, Fatasil, Ambari, Geeta nagar, Gorchuk, Hatigaon, Jalukbari, Khetri, Latasil, Noonmati, North Guwahati, Paltan Bazar, Panbazar, Satgaon, Sonapur, Crime Branch till disposal of the present petition.

6. In this context, the learned Additional Public Prosecutor has submitted that the present accused/petitioner is involved in a very serious nature of offence wherein he manipulated several land documents and thereby cheated a lot numbers of persons and it is an organized crime committed by him and there

was an nexus with other persons also to commit the crime. He, being the employee of the Sub-Registrar Office, Kamrup (Metro), has the access of the land records and thus, he committed the offence of forgery and manipulated of land records etc. and therefore, he is not only involved in the land graving matters, but in the same time, he is also involved in criminal activities like forgery of the documents. Moreover, the petitioner is also arrested in connection with Garchuk P.S. Case No. 325/2023, under Sections 120B/467/468/447 of the Indian Penal Code, and the investigation is still going on and his involvement in other cases also may be detected during the investigation of the present case. Further he submitted that no case number has been given by the petitioner and he just made a hypothetical statement that he may be arrested by various police stations of Kamrup (Metro) District with the same set of allegation. Without any reference of any case, it is not at all possible to grant anticipatory bail to the accused and which will otherwise encourage him to do the similar kind of offence if he got the privilege of pre-arrest bail. Accordingly, the learned Additional Public Prosecutor vehemently objected and submitted that this is not at all a fit case to grant anticipatory bail to the present accused/petitioner with a vague statement and anticipation that he may be arrested in connection with cases by various police stations of Kamrup (Metro).

7. After hearing the submissions made by the learned counsels for both sides, I have perused the case record and the F.I.R., wherein the allegation of forgery of documents and manipulation of the land records are being brought against the present accused/petitioner and without any basis of the cases, it is not possible to give a blanket order of anticipatory bail to the accused/petitioner. In appropriate cases, he may be granted with the anticipatory bail, but without

any reference of any cases or G.D. Entry etc., the accused/petitioner cannot be granted with the privilege of pre-arrest bail at this stage. Further, the prayer of the petitioner of prior issuance of notice also cannot be considered at this stage as the accused is already behind the bar. The prayer for shown arrest is also generally considered by the learned Magistrate after thorough perusal of the Case Diary and prayer for shown arrest is allowed only if there is any need of his arrest in connection with the other cases or prayer for shown arrest accordingly may be allowed by the Magistrate. But, at present, without registration of any cases, it is not at all possible to give the protection under Section 438 Cr.P.C. to the present accused/petitioner and also considering the gravity of the offence alleged against him, I do not find it a fit case to grant him the privilege of pre-arrest bail only on the basis of a hypothetical statement that he may be arrested in connection with police cases of various police stations under the Kamrup (Metro).

8. In view above, I am of the view that this is not a fit where the privilege of pre-arrest bail can be extended to the accused/petitioner and accordingly, the same stands rejected.

9. In terms of above, this anticipatory bail application stands disposed of.

JUDGE

Comparing Assistant