

GAHC020000622023



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

Case No. : AB/2/2023

SRI. ABHILASH KISHORE KASHYAP
S/O LT. PRADYUT KUMAR DAS,
AGED ABOUT 29 YEARS, R/O H/NO.207,
HENGRABARI L.P.SCHOOL, P.O - HENGRABARI, DISPUR, GUWAHATI, ASSAM
- 781036

VERSUS

THE STATE OF NAGALAND
REPRESENTED BY THE PUBLIC PROSECUTOR, NAGALAND

Advocate for the Petitioner : P J SAIKIA

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HONBLE MR JUSTICE KARDAK ETE**

ORDER

Date : 10.04.2023

Heard Mr. P.J. Saikia, learned senior counsel for the applicant, assisted by Ms. Thuyukhrulu, learned counsel, and also heard Mr. V. Zhimomi, learned Public Prosecutor for the State.

2. This application under Section 438 of the CrPC, 1973 has been filed by the applicant seeking pre-arrest bail in connection with GD

Entry No. 06/2022 of East Police Station, Dimapur, Nagaland. The basis of apprehending arrest is the notice under Section 41A of CrPC, 1973 by which the Police has issued to the applicant stating that a criminal case is undergoing investigation at East Police Station, Dimapur, Nagaland, GDE No. 06/2022 dated 29.11.2022, wherein a complaint was filed by one Mr. Ruuzhalie Nagi relating to the Project Development of existing 2 lane pavement including straightening of NH-36 in Dimapur, which was awarded to M/s Kampung Kamyar Trading Co., Papunallah near Diet Building, Jolly Road, P.O. & P.S. Naharlagun, papum Pare, Arunachal Pradesh.

3. The applicant is shown to be the authorized legal representative of M/s Kampung Kamyar Trading Co. as well as Managing Director of M/s Zeliethu & Sons which, was stated to be responsible for depositing the Performance Security of Rs. 41,26,255/- (Rupees Forty One Lakh Twenty Six Thousand Two Hundred Fifty Five) only, and it is also alleged that the said Performance Security known as Performance Bank Guarantee deposited by the applicant was fake and forged.

4. Mr. P.J. Saikia, learned senior counsel for the applicant submits that the applicant is apprehending arrest by Police in view of the two notices issued under Section 41A, CrPC by the Officer-in-Charge, East Police Station, Dimapur, Nagaland on 12.01.2023 and 25.01.2023. He submits that the applicant was the authorized legal representative prior to the Contract agreement.

The learned senior counsel submits that the applicant is in no way connected to the execution of the work. There was an

agreement with the informant to the extent of providing technical support and credentials to the authorities if required. There is no question of submission of Performance Bank Guarantee, therefore the applicant is not at all connected with the allegation. This Court, on 20.03.2023 pending production of the instruction by the learned Public Prosecutor has granted pre arrest bail on the following conditions:

- (i) The petitioner shall appear before the Officer-in-Charge, East Police Station on 23.03.2023.
- (ii) The petitioner shall be released on executing the bail bond of Rs. 1,00,000/- (Rupees One lakh) only with one surety of the like amount to the satisfaction of the Officer-in-charge, east Police Station, Dimapur, Nagaland, in the event of his arrest.
- (iii) The petitioner shall not tamper with the evidence of the Investigating Agency or the prosecution witnesses.
- (iv) The petitioner shall not leave the jurisdiction of the East Police Station, Dimapur without the prior permission of the Officer-in-Charge of the said police station. However, such permission shall be leniently considered by the Officer-in-Charge concerned keeping in view that the petitioner has his business and place of residence at Guwahati.
- (v) In the event of violation of any of the condition above, the interim pre-arrest bail granted to the petitioner shall stand automatically cancelled.

5. The learned Public Prosecutor produced a scanned Case Diary today. Relying on the scanned Case Diary the learned Public Prosecutor submits that the Enquiry Officer of the case, East Police Station, Dimapur has closed the Miscellaneous Case Diary at East Police Station for other law and order duty, wherein it is stated that henceforth an agreement was executed between the parties and they have decided to follow up with the agreement terms executed on 23.03.2023. The agreement has not been done under any coercive manner where it was made willfully and voluntarily by both parties. It further stated that the FIR has not been withdrawn yet by the complainant as the condition of the said agreement cites that any failure in the agreement made thereof by Mr. Abhilash Kishore Kashyap will lead into a lawful course of action. However, the said submission relied on the Case Diary is disputed by the learned senior counsel for the applicant.

6. On consideration of the submission and the materials placed before this Court, this Court finds that in view of the submission indicated above that no custodial interrogation is required therefore this Court deems it appropriate to allow the application. Accordingly, the Interim order granting bail by this Court on 20.03.2023 is made absolute with the same terms and conditions.

Bail application is allowed and disposed of.

Sd/-
JUDGE

Comparing Assistant