

GAHC020004182023



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

Case No. : AB/29/2023

SRI. AJAY BAHADUR SINGH
S/O LATE SUBH NARAYAN SINGH
PROPRIETOR OF SANITARY HARDWARE STORE
DR. R.P. ROD
GANESHGURI
DISPUR
GUWAHATI-6 ASSAM

VERSUS

THE STATE OF NAGALAND
KOHIMA NAGALAND

Advocate for : MOA JAMIR
Advocate for : P.P
NAGALAND appearing for THE STATE OF NAGALAND

**BEFORE
HONBLE MR JUSTICE KARDAK ETE**

ORDER

Date : 24-08-2023

Heard Mr. I. H. Saikia, learned counsel for the applicant and also heard Mr. V. Zhimomi, learned Public Prosecutor for the State of Nagaland.

The applicant has filed this application under section 438 Cr.PC, 1973 praying for grant of pre-arrest bail in connection with Sub-Urban Police Station, Dimapur, P.S. case no. 43/2023 under section 420/406 IPC.

An FIR was lodged before the Officer-in-Charge of Sub-Urban Police Station, Dimapur on 05.06.2023, by one Imtitemsu Imsong alleging that the informant had contacted the accused for purchase of TMT rods, cement and other materials from the accused which were to be sent to Dimapur and against the said contract, the informant paid a sum of Rs. 13,62,000/-. However, the applicant/accused though agreed to send the materials to the informant, same has not been received and therefore, the applicant has committed criminal breach of trust and cheating to the informant. On receipt of the said FIR, the Dimapur Sub-Urban PS case no. 43/2023 was registered.

The learned counsel for the applicant/accused submits that there was a business relationship between the applicant and the informant in fact, the informant had paid a sum of Rs. 42,95,000/- to the applicant and the materials against the said payment had already been delivered to the informant and a sum of Rs. 16,845/- only remains outstanding against the applicant which the applicant is ready to pay back.

After registration of the FIR, the applicant received the notice under section 41A of the Cr.PC from the IO, and the applicant had send the written reply on 14.06.2023 to the Investigating Officer stating his stand clear therein and also stating that if there is a dispute between the parties, it is in the nature of civil dispute. The

learned counsel for the applicant submits that thereafter two other notices were issued to the applicant and the Dimapur Police Station came to arrest the applicant due to which he has is apprehending his arrest in connection with the present case. The learned counsel for the applicant further submits that it is purely a business transaction and no criminal case is made out. The applicant is suffering from various illness for which there is a risk of life in the event the applicant is arrested and put behind the bar and therefore prays for grant of pre-arrest bail in the present case.

On 04.08.2023, this Court by way of interim order directed the applicant to appear before the Investigating Officer of Dimapur PS Case no. 43/2023 within 10 (ten) days from the date of the order and to co-operate with the I.O and on such appearance within the stipulated period, in the event of his arrest in connection with the Dimapur PS case no. 43/2023, the applicant was allowed to go on bail on payment of Rs. 30,000/- with surety of like amount to the satisfaction of the arresting authority.

However, instead of appearing before the I.O, as directed by this Court, the applicant has filed the I.A for extension of period of appearance on the ground that he is suffering from various ailment, therefore prays for granting him three months time to appear before the I.O.

Mr. V. Zhimomi, learned PP for the State of Nagaland placed the detailed report from the Investigating Officer in connection with Dimapur PS case no. 43/2023. Referring to the detailed case report, learned PP submits that the offences under section 406/420 have been clearly made out. Moreover, despite several notices issued

under section 41A of Cr.PC, the applicant is intentionally evading. It is also submitted that non-bailable warrant of arrest has been issued twice, however, when the police went to the accused, the accused remains absconding. Therefore, the applicant/accused is not entitled of pre-arrest bail.

I have considered the submissions made by the learned counsel for the parties and also perused the detailed case report produced by the learned PP.

On perusal of the contents of the written report of the case, it transpires that the applicant had been issued notices under section 41A of Cr.PC as required under law. Thereafter, the applicant has failed to appear on such notices. The non-bailable arrest warrant were also issued by the concerned Court, however, the applicant could not be arrested or found out, which indicates that the accused is absconding.

Having considered the materials available on record and in view of the submissions of the learned counsel for the applicant that the accused/applicant is suffering from various ailments including cardiac problem, this Court is inclined to grant the privilege of pre-arrest bail to the applicant Shri. Ajay Bahadur Singh with the condition that the applicant/accused shall appear before the Investigating Officer, in connection with the Dimapur Police Station Case no. 43/2023 within a period of 10 (ten) days from the date of this order and co-operate with the Investigating Officer. On such appearance, in the event of his arrest in connection with the Dimapur Police Station Case No. 43/2023, the applicant shall be released on a bail of Rs. 40,000/- with one surety of like amount to

the satisfaction of the arresting authority. It is made clear that if the applicant/accused fails to appear as directed herein above, the bail granted to the accused shall automatically stands cancelled.

Accordingly, bail application stands disposed of.

Sd/-
JUDGE

Comparing Assistant