



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

Case No. : AB/2/2024

Talem Jamoh
S/o Late Tasi Jamoh, R/o Mopit (Rasing) village, PO Boleng, Siang District, AP

VERSUS

The State of AP
represented by the Special PP, SIC (Vigilance)

Advocate for the Petitioner : Marto Kato, N. Sora, M. Tanga, A. Tatak, T. Gyatso, T. Gao

Advocate for the Respondent : Ojing Pada, SPP SIC (VIG)

BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 25-01-2024

Heard Mr. M. Kato, learned counsel for the accused/applicant. Also heard Mr. O. Pada, learned Special Public Prosecutor for the SIC (Vigilance).

2. This is an application under Section 438 of the Cr.P.C. praying for grant of pre-arrest bail in connection with SIC (Vigilance) PS Case No. 09/2023, dated 20.12.2023 registered under Sections 120(B)/420/468/471/409 IPC read with Section 13 (2) of the Prevention of Corruption Act, 1988.

3. Case Diary called for, has been received.

4. Mr. Kato, learned counsel for the accused/applicant has submitted that the present accused/applicant is innocent and he is no way involved in the alleged offence. That the name of the accused/applicant is implicated in this present F.I.R., dated 20.12.2023, only for the reason that he was discharging his duty as Deputy Director of Secondary Education (DDSE), Bolegng, from July 2019 till his date of superannuation on 29.04.2023. One *Shri Tajing Saroh* had lodged an F.I.R. before the Officer-in-charge, SIC, (Vigilance), Itanagar, alleging massive illegal appointments of PRTs and MTS at Siang District in the Department of Education, Government of Arunachal Pradesh. Upon receipt of the F.I.R., the Officer-in-Charge, SIC (Vigilance), Itanagar, has registered the same as SIC (Vigilance) P.S. Case No. 09/2023, dated 20.12.2023, under Sections 120(B)/420/468/471/409 IPC, read with Section 13 (2) of the Prevention of Corruption Act, 1988. As the accused/applicant was discharging his duty as DDSE, he has an apprehension of arrest in the name of investigation by SIC (Vigilance), Itanagar and for which, he filed the present application seeking Anticipatory Bail. However, he is ready and willing to cooperate with the Investigating Officer in further investigation of the case.

5. The learned counsel for the accused/applicant, further submitted that after obtaining the interim pre-arrest bail, the accused/applicant appeared before the Investigating Officer on 3 (three) occasions and gave his statement under Section 161 Cr.P.C. and also produced all the relevant documents as he was asked to produce before the Investigating Officer. The accused/applicant while discharging his duty as a DDSE from July 2019 till his superannuation on 29.04.2023, he had only performed his official duty diligently by following the

directions and instructions from the superior authority. As such, the accused/applicant does not have any authority to say over the alleged appointment of PRTs and MTS. Further, no specific allegation has been brought against the present accused/applicant in the present F.I.R. and all the appointments which were alleged as illegal appointments were made by the Director Elementary Education, Itanagar, Government of Arunachal Pradesh and as such, the present accused/applicant being the DDSE had no authority to appoint PRTs and MTS. Hence, he is no way connected in the said illegal appointments made by the Director Elementary Education, Itanagar, Government of Arunachal Pradesh.

6. The learned counsel, Mr. Kato further submitted that from the termination order of the appointees, dated 16.11.2023, it is seen that all the appointment orders were made in the year 2016 and the date of appointments were in the year 2018, whereas, the present accused/applicant took charge of DDSE only in the year 2019 and thus, he has no connection in the illegal appointments as alleged in the F.I.R. However, he is still ready and willing to cooperate with the Investigating Officer in further investigation of the case if he is granted with the privilege of pre-arrest bail. More so, 90% of the investigation is already completed by the Investigating Officer and hence, custodial interrogation of the present accused/applicant is not at all necessary. The accused/applicant is a retired person of 61 years of age and he is having a permanent residence in his address locality and hence, there is no chance of absconding if he is granted the privilege of pre-arrest bail.

7. The learned counsel for the accused/applicant, Mr. Kato, relied on the following decisions of the Hon'ble Supreme Court, held in the case of:

(i). ***Niranjan Singh & Anr. Vs. Prabhakar Rajaram Kharote & Ors.*** reported in ***(1980) 2 SCC 559.***

(ii). ***Sanjay Chandra vs. Central Bureau of Investigation,*** reported in ***(2012) 1 SCC 40.***

(iii). ***Arnesh Kumar vs. State of Bihar and anr.,*** reported in ***(2014) 8 SCC 273.***

(iv). ***Dataram Singh vs. The State of Uttar Pradesh & Anr.,*** reported in ***(2018) 3 SCC 22.***

(v). ***Nikesh Tarachand Shah vs. the Union of India,*** reported in ***(2018) 11 SCC 1.***

8. In the case of ***Niranjan Singh (supra)***, the Hon'ble Apex Court has expressed the view that while dealing with the bail matter, the Court should be satisfied only about the *prima-facie* case and need not to go on its merits.

9. In another judgment relied on by the counsel for the accused/applicant in the case of ***Sanjay Chandra*** (supra), it is the view of the Hon'ble Apex Court that balance of approach should be taken while granting bail subject to certain conditions and prejudices which may be avoided in declining bail matters and bail ought not to be denied to teach a lesson to a person whose offence is yet to be proved.

10. In the case of ***Nikesh Tarachand Shah*** (supra), the Hon'ble Apex Court has held that grant of bail is a Rule and refusal is an exception and judicial

verdict regarding this depends upon the cumulative effect of various circumstances, specific to each case.

11. Again, in the case of **Dataram Singh** (supra) as relied by the learned counsel for the accused/applicant, it is held by the learned Apex Court that trial Judge as well as the High Court ought to have judiciously exercise discretion and grant bail to the appellant if there is no apprehension that the appellant would abscond or hamper trial in any manner.

12. The learned counsel for the accused/applicant further also relied on a decision of Hon'ble Apex Court in the case of **Arnesh Kumar** (supra), and emphasized on paragraph- 5, which reads as under:

“...5. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.PC. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.”

13. Relying on the above referred judgments, it is submitted by the learned counsel for the accused/applicant that he already appeared before the Investigating Officer and cooperated in the investigation of this case and he is still ready and willing to cooperate with the further investigation of the case and ready to abide by any conditions put in the bail order as well as the direction of

the Investigating Officer if he is granted with the privilege of pre-arrest bail.

14. Mr. O. Pada, the learned Special Public Prosecutor, SIC (Vigilance) submitted that the accused/applicant is not cooperating with the Investigating Officer and is not disclosing some relevant facts involved in the present case. He further submitted that the present accused/applicant is very much involved in the alleged offence and he being the DDSE during that period, facilitated the joining of the candidates appointed three or four years earlier as per their appointment letters. He further submitted that from the note of the I.O., it is seen that the present accused/applicant is refraining from disclosing crucial information pertaining to the case and is not cooperating with the I.O. and concealed many facts of the case and refrained from disclosing all the facts before the I.O. He further submitted that it is a fact that the appointment orders were made in the year 2016, prior to the joining of the present accused/applicant as a DDSE in the Department but from the Case Diary and other documents, it is seen that though the appointment orders were made in the year 2016-17 but the candidates joined in the service only in the year 2021 and thus, despite appointment orders being issued in the year 2017-18, the present accused/applicant facilitated the candidates joining with a significant time gap under his name and signature. More so, during the interrogation, he also acknowledged his personal relationship with some of the individual whose services are being terminated and thus, the risk of influencing the witnesses in investigation also cannot be denied at this stage. Further, during the investigation by the I.O., it has also come out that some of the service-books are missing and the accused/applicant did not cooperate with the I.O. in that regard and also did not disclose anything as to how some of his relatives also got appointment as PRTs and MTS. Hence, the probability of manipulation of

some other records by the then DDSE i.e. the present accused accused/applicant cannot be denied at this stage.

15. Mr. O. Pada, learned Special Public Prosecutor, SIC (Vigilance) also submitted that the entire offence comes under the socio-economic offence and is constituted a class apart and hence, a different approach is needed while considering the bail application in such economic offences. He further submitted that such kind of offence not only affect the entire society, it will also affect the minor students if the appointment of the teacher is itself illegal.

16. Mr. O. Pada, learned Special Public Prosecutor, SIC (Vigilance) further relied on a decision of the Hon'ble Apex Court, passed in the case of **P. Chidambaram vs. Directorate of Enforcement**, reported in **(2019) 9 SCC 24** and mainly emphasised on paragraph- 75, 78, 79, 80, 81 83, which reads as under:

“...74. Ordinarily, arrest is a part of the process of the investigation intended to secure several purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation. Pre-arrest bail is to strike a balance between the individual's right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information. In State v. Anil Sharma, the Supreme Court held as under:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which

would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

75. Observing that the arrest is a part of the investigation intended to secure several purposes, in *Adri Dharan Das v. State of W.B.*, it was held as under:

“19. Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the locality. For these or other reasons, arrest may become an inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. The role of the investigator is well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily will not interfere with the investigation of a crime or with the arrest of the accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code.”

Economic offences

78. Power under Section 438 Cr.P.C. being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain (1998) 2 SCC 105, it was held that in economic offences, the accused is not entitled to anticipatory bail.

79. The learned Solicitor General submitted that the "Scheduled offence" and "offence of money laundering" are independent of each other and PMLA being a special enactment applicable to the offence of money laundering is not a fit case for grant of anticipatory bail. The learned Solicitor General submitted that money laundering being an economic offence committed with much planning and deliberate design poses a serious threat to the nation's economy and financial integrity and in order to unearth the laundering and trail of money, custodial interrogation of the appellant is necessary.

80. Observing that economic offence is committed with deliberate design with an eye on personal profit regardless to the consequence to the community, in State of Gujarat v. Mohanlal Jitmalji Porwal and others (1987) 2 SCC 364, it was held as under:-

"5. The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest....."

81. Observing that economic offences constitute a class apart and need to

be visited with different approach in the matter of bail, in Y.S. Jagan Mohan Reddy v. CBI (2013) 7 SCC 439, the Supreme Court held as under:-

“34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.”

83. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent-Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail.”

17. Relying on the above referred judgment, Mr. O. Pada, learned Special Public Prosecutor, SIC (Vigilance) submitted that the accused is not cooperating in the investigation of the case as he is under interim protection, which otherwise will hamper the proper investigation of this case and the probability of tampering the other witnesses by the accused/applicant cannot be denied. He

further submits that the case is still at a nascent stage of investigation and considering all these aspects of this case as well as the nature of the offence, he prayed to dismiss the present bail application for pre-arrest bail and also prayed to set aside the order of interim pre-arrest bail granted on 05.01.2024.

18. After considering the submissions made by the learned counsels for both the sides, I have perused the Case Diary as well as the report submitted by the Investigating Officer.

19. It is seen that the present accused/applicant was not in service while the appointment orders were made for the 102 number of candidates in the post of PRTs and MTS, as the appointment orders were issued in the year 2016-17 and the date of appointment orders were also released in the year 2018. But the question arises as to why the candidates were allowed to join after a gap of more than 2 (two) years if their appointments were made in the year 2017-18. From Annexure-2 of the bail application i.e. the order, dated 13.11.2017, passed by the Director of Elementary Education, Government of Arunachal Pradesh, it is seen that the probation period was 2 (two) years w.e.f. the date of joining and his or her continuation beyond probation period of 2 (two) years shall be subject to satisfactory performance during the probation period. Thus, probation period of the candidates was only up to 2019, as all the appointments were made in the year 2016 or 2017. But even after a gap of 2 (two) years of probation period, the candidates were allowed to join under the seal and signature of the present accused/applicant, which also raises doubt in regards to the legality of the appointment process and joining of the appointed candidates under the jurisdiction of the present accused/applicant during his tenure in service. From the note of the I.O. also it reveals that some of the service books

of the appointed candidates are still missing and he failed to give any satisfactory explanation with regards to the missing of service books and it is seen that he did not cooperate with the I.O. or give any proper explanation with regards to his relation with the appointed candidates as well as the candidates who are his near relatives.

20. It is also an admitted position that the present case falls under the economic offence and hence, it has to be looked in different aspect even while considering the bail application.

21. In that context, the judgment of Hon'ble Apex Court, in the case of ***Nimmagadda Prasad vs. Central Bureau of Investigation***, reported in **(2013) 7 SCC 466**, can also be relied on and in paragraph 24-25 it is held as under:

“...24. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the

economy of the country as a whole and thereby posing serious threat to the financial health of the country."

22. In view of the discussions made above and on considering the incriminating materials as well as the report of the I.O. vis-à-vis the nature and gravity of the offence, this Court is of the view that this not a fit case where the privilege of pre-arrest bail can be granted to the accused/applicant and accordingly, the order of interim pre-arrest bail granted on 05.01.2024 stands vacated.

23. The anticipatory bail application stands rejected and dismissed.

JUDGE

Comparing Assistant