

GAHC040002212024



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

Case No. : BA/11/2024

Nang Gao

Son of Shri Durga Gao, resident of Sika Bamin Village, PO and PS Oyan, East Siang District, Arunachal Pradesh

VERSUS

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

Advocate for the Petitioner : Kamal Saxena

Advocate for the Respondent : Ojing Pada, SC, SIC(Vig.)

BEFORE
HONBLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 01.03.2024

Heard Mr. P. K. Tiwari, learned counsel, assisted by Mr. Kamal Saxena, learned counsel, appearing on behalf of the applicant. Also heard Mr. Ojing Pada, learned standing counsel, SIC(Vig.), appearing on behalf of the respondent State of Arunachal Pradesh.

2. This bail application under Section 439 of the Code of Criminal Procedure, 1973, has been preferred by the applicant for grant of regular bail to the accused Shri Tapi Gao who has been arrested on 15.02.2024 in connection with SIC(Vig.) P.S. Case No. 04/2023, registered u/ss. 120(B)/420/468/471/409 IPC, *read with* Section 13(2) of the Prevention of Corruption Act, 1988.

3. The accusation in the First Information Report(FIR) against the accused person, named-above, is that he in his capacity as the Director of Elementary Education, Government of Arunachal Pradesh, was involved in the issuance of fake orders of appointment which was detected in the Office of the Deputy Director of School Education, Government of Arunachal Pradesh, Anjaw. The said appointments were purportedly made in respect of 21 posts of PRTs and 2 posts of Multi-Tasking Staff(MTS). The persons so appointed do not figure in the select list as prepared for the purpose of recruitment against the said posts involved.

4. Mr. Tiwari, learned senior counsel appearing for the applicant; submits that the accused person had retired from his services w.e.f. 31.05.2021, on attaining the age of superannuation.

5. By referring to the materials available on record; Mr. Tiwari, learned senior counsel, contends that the accused person was also involved in connection with SIC(Vig.) Police Station Case No. 02/2023 basing on same allegations and this Court vide order, dated 24.08.2023, passed in AB No. 51(AP)2023, considering the facts as involved in the matter including the health condition of the accused person, had granted the privilege of pre-arrest bail to the accused person in connection with the said case. The said interim directions as passed by this Court, vide order, dated 24.08.2023, was confirmed vide order, dated 14.09.2023, passed by this Court in AB 51(AP)2023. It is contended that the State, thereafter, had assailed the grant of bail to the accused person before the Hon'ble Supreme Court by way of filing an appeal i.e. Special Leave to Appeal(Criminal) No. 14250/2023. The Hon'ble Supreme Court, vide order, dated 06.11.2023, holding that no ground for interference was made-out, was pleased to dismiss the said Special Leave to Appeal(Criminal) No. 14250/2023. It is further submitted that after the said developments, the authorities had registered the

present case i.e. SIC(Vig.) Police Station Case No. 04/2023 in connection with allegations relating to effecting of illegal appointments in Anjaw District.

6. Mr. Tiwari, learned senior counsel for the applicant; by relying on an additional affidavit filed by the applicant, further submits that the health condition of the accused person had deteriorated during the intervening night of 25.02.2024 to 26.02.2024 and accordingly, the accused person was required to be forwarded from custody to Tomo Riba Institute of Health and Medical Sciences(TRIHMS), Naharlagun, for check-up.

7. Mr. Tiwari, learned senior counsel, also submits that the health condition of the accused person has since deteriorated to a great extent and he was accordingly required to be admitted into the Intensive Care Unit(ICU) of Tomo Riba Institute of Health and Medical Sciences(TRIHMS), Naharlagun, and he is presently continuing his treatment therein.

8. Mr. Tiwari, learned senior counsel, further submits that the accused person having retired way back on 31.05.2021 from the post of Director of Elementary Education, Government of Arunachal Pradesh, he presently has got no access to the documents that may be available in the said Directorate and/or any of its subordinate Offices and he is also not in a position to tamper with the evidences in the matter and/or influence any of the witnesses who may be required to depose in the trial.

9. Mr. Tiwari, learned senior counsel, therefore, urges this Court to be pleased, considering the factors involved in the matter, to enlarge the accused person on bail.

10. Mr. Pada, learned standing counsel, SIC(Vig.), on the other hand, by placing

before this Court, the related CD in connection with SIC(Vig.) Police Station Case No. 04/2023, submits that the accused person is the king-pin in connection with illegal appointments so made in the subordinate offices of the various Districts in the State including the District of Anjaw.

11. Mr. Pada, learned standing counsel, SIC(Vig.), by referring to the materials that have come on record, submits that the bail of the accused petitioner is to be rejected in-as-much as he is likely to tamper with the evidences and influence the witnesses given the status of the accused person. Accordingly, Mr. Pada, vehemently opposes the prayer of the applicant for grant of regular bail to the accused person, herein.

12. I have considered the submissions of the parties and also perused the related CD.

13. It is seen that the accused person has a history of heart-related ailments and the treatment required not being able to be provided to him while in custody and his health condition deteriorating, he was forwarded on 26.02.2024 from police custody to Tomo Riba Institute of Health and Medical Sciences(TRIHMS), Naharlagun, for treatment.

14. It is also to be noted that the health condition of the accused person further deteriorating, he was admitted to the Intensive Care Unit(ICU) of Tomo Riba Institute of Health and Medical Sciences (TRIHMS), Naharlagun, at around 2.25PM of 26.02.2024 and he is reportedly still admitted in the Intensive Care Unit(ICU) of the said Institute.

15. It has also been projected by the applicant that the expenses for medical treatment of the accused person are being borne by the family members of the accused person. It is to be noted that the accused person's ailments require specialized treatment.

16. The investigation in the matter has progressed fairly and it is seen that the Investigating Agency had on 29.02.2024 when the matter was taken-up before the Court of learned Judicial Magistrate 1st Class, Yupia; submitted an application praying for sending the accused person Shri Tapi Gao to judicial custody on the ground that the police interrogation has been completed against the present accused person and his statement has also been recorded under Section 161 of the Code of Criminal Procedure, 1973.

17. It is to be noted as on 29.02.2024; the accused person was admitted in Tomo Riba Institute of Health and Medical Sciences (TRIHMS), Naharlagun, and his production was so done by way of video conferencing.

18. Further apprehension of Mr. Pada, learned standing counsel, SIC(Vig.) is that grant of regular bail to the accused person, may facilitate him to tamper with the evidences and also influence persons, working in the Directorate of Elementary Education, Government of Arunachal Pradesh, who would be required to depose as witnesses in the criminal proceedings. The said apprehension has been duly noted. However, given the fact that the accused person had already retired from his services w.e.f. 31.05.2021 on attaining the age of superannuation, he would not have access to the records that would be available in the Directorate of Elementary Education, Government of Arunachal Pradesh, and/or any of its subordinate offices in the various Districts of the State and would also not be able to influence any of the witnesses

working in the said establishments.

19. In view of the above, the accused person Shri Tapi Gao is enlarged on bail and shall be released on bail on his furnishing a bail bond of Rs. 50,000/- with 2(two) sureties of like amount to the satisfaction of the learned Judicial Magistrate 1st Class, Yupia, who has been assigned the charge of remand and production by the learned District & Sessions Judge, Yupia, vide order, dated 28.02.2024, during the period of absence of the learned Special Judge(PCA), Yupia, on the following terms and conditions:

- (i). The accused person shall fully cooperate with the I.O. of SIC(Vig.) Police Station Case No. 04/2023.
- (ii). The accused person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer and/or tamper with the evidence of the case.
- (iii). The accused person shall not leave the territorial jurisdiction of the Court of learned Judicial Magistrate 1st Class, Yupia, without prior permission the said Court.
- (iv). The accused person is restrained from visiting the Offices of the Directorate of Elementary Education, Government of Arunachal Pradesh, and/or any of its subordinate Offices and is also restrained from making contact with any employee who as on today may be serving in the said establishments and who is a person acquainted with the facts of the case.

20. With the above directions, this bail application stands disposed of.

21. The related CD be returned forthwith to Mr. Pada, learned standing counsel, SIC(Vig.).

JUDGE

Comparing Assistant