

GAHC040015032024



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

Case No. : AB/134/2024

Monoj Pait
Son of Gadadhar Pait,
a resident of Akajan Miri Gaon,
PO and PS Akajan, Dhemaji District,
Assam 787060

VERSUS

The State of AP
represented by the PP of AP

Advocate for the Petitioner : Tabit Tapak, Y Pangu, T Tabing, Aso Dalbong

Advocate for the Respondent : Ms. L. Hage, Addl. P P of AP,

BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE

ORDER

Date : 28-11-2024

Heard Mr. T. Tapak, learned counsel for the applicant. Also heard Ms. L. Hage, learned Additional Public Prosecutor for the State.

2) This is an application under Section 482 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, praying for grant of privilege of pre-arrest bail to the

accused person, namely, Dheeraj Pao, in connection with Pasighat P.S. Case No.115/2023, under Section 420/406 of the IPC.

3) The investigation has been set into motion on the complaint/ FIR filed by one Taken Pago of Korang Village of East Siang District to the effect that huge scam is in operation, in which the informant was fraudulently made to transfer his hard earned money amounting to Rs.10,00,000/- (Rupees Ten Lakhs) only, by the accused, namely, Shri Dheeraj Pao of Dhemaji District, Assam and the proprietor of M/s. Rhodes Estates Private Limited, Guwahati, in connivance with one Shri Prashant Mishra, who have jointly convinced the informant during the mid part of 2022, that the tender works for construction of telecom towers in East Siang District, West Siang District, Upper Siang District, Siang District and Lower Dibang Valley District shall be awarded to the informant, as their firm has been awarded the tender works of erecting telecommunication tower throughout the North-Eastern States. The informant initially handed over an amount of Rs.2,00,000/- (Rupees Two Lakhs) on 24.09.2022 and then transferred an amount of Rs.8,00,000/-(Rupees Eight Lakhs) on 13.10.2023, into the account of the accused Dheeraj Pao, being HDFC A/C. No.50100326160198. It is alleged that the accused person, after receipt of the payment, as demanded by him, has started avoiding the informant. It is alleged that there was no allotment of the work and it is only in the month of July, 2023, when construction of the telecom tower at korang village, started by another company, the informant sensed foul-play and demanded the money back from the accused, who has again asked for more money from the informant. It is stated that despite of repeated requests, the accused failed to transfer the amount back, thereby had cheated the informant.

4) On receipt of the said complaint, an FIR was registered being Pasighat P.S. Case No.115/2023, under Section 420/406 of the IPC.

5) Mr. T. Tapak, learned counsel for the applicant submits that the accused is a representative of M/s. Rhodes Estates Private Limited, who has no role to decide the transaction. There is a contract between the informant and the Company, in which an amount admittedly has been deposited by the informant, in which the accused is simply a representative. Therefore, he submits that on the face of it, the FIR does not disclose any criminal liability, rather it is purely a civil dispute between the Company (under which the accused is a representative) and the informant. He submits that multiple FIRs have been filed against the accused in the State of Arunachal Pradesh, in view of breach of contract between the Company under which the accused is a representative and other persons, who are involved in the business transactions. He has also informed that presently the accused has been arrested in connection with another case and is in judicial custody at Deomali.

6) This Court, on several occasions has directed the learned Addl. Additional Public Prosecutor for the State to produce the case diary and place the up dated status report in connection with the present case, on receipt of the case diary on 12.11.2024, as no required progress was discernable from the case diary.

7) Today, the learned Additional Public Prosecutor, while referring to an order passed by this Court in AB No.121/2024, submits that despite the interim bail order passed by this Court, the accused has failed to appear in another case lodged at Itanagar Police Station. The interim bail was not extended, although

the learned counsel for the petitioner, in that case has submitted that in view of the arrest of the accused in another case i.e. Chimpu P.S. Case No.09/2024, he could not appear. Therefore, she submits that the accused is not entitled to the privilege of pre-arrest bail in this matter, as many cases have been registered against the accused in many parts of the State. She also submits that in view of arrest of the petitioner in Deomali Police Station case, who is under judicial custody, no arrest could be made and investigation could not be progressed further.

8) On consideration of the records submitted by the learned Additional Public Prosecutor, it appears that no serious attempt has been made to investigate the present case, on the pretext of the accused has been arrested in another case i.e. in Deomali Police Station case, and he is in judicial custody at Deomali. It is not understood as to why the investigation has not been proceeded further just because the accused is under judicial custody in different place in connection with other cases.

9) Except informing that a prayer has been made for production warrant before the appropriate Court, there is nothing on record that the police is serious in it's duty to pursue the matter. Although Ms. L. Hage, learned Additional Public Prosecutor has submitted that the police has already prayed for production warrant of the accused, there is nothing on record to show that any action has been initiated by the police for proper investigation of the matter.

10) On perusal of the FIR, it *prima facie* appears that the dispute is of civil nature, as the same relates to erecting of telecom towers, wherein the company

of the accused and the informant were desirous of entering into business transaction. On the face of it, it appears to be a dispute of civil nature where the allegation of cheating has been alleged against the petitioner.

11) Having considered the materials on record, I am of the view that the accused is entitled to the privilege of pre-arrest bail in the present case.

12) Accordingly, it is provided that in the event of arrest of the accused, namely, Dheeraj Pao, in connection with Pasighat P.S. Case No.115/2023, under Section 420/406 of the IPC, he shall be enlarged on bail on furnishing a bail bond of Rs.50,000/- (Rupees fifty thousand) only, with a local surety of like amount to the satisfaction of the arresting authority, subject to the condition that the accused shall appear before the investigating authority as and when called for and shall cooperate with the investigating authority.

13) It is expected that the investigating authority shall be mindful to their duties and responsibilities in the case. Needless to observe that the observation made on the FIR, shall not be taken as a final view on the merit of the present case or other pending cases, as the same is a *prima facie* view of this Court and shall not be influenced the investigation in any manner whatsoever.

14) The bail petition stands allowed and disposed of.

JUDGE

Comparing Assistant