

GAHC040015842023



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

Case No. : AB/84/2023

Tapung Jeke @ Niapung Hengam
R/o near Range Forest Office, Lobi, PO/PS Itanagar, Dist. Upper Subansiri, A.P Cont.
8119091526

VERSUS

The State of AP
represented by SPL PP SIC

Advocate for the Petitioner : L Kurdu

Advocate for the Respondent : SPL.P.P.

BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA

JUDGMENT

Date : 01.02.2024

Heard Mr. T. T. Tara, learned counsel for the petitioner/accused. Also heard Ms. O. Pada, learned Special Public Prosecutor, SIC (Vig).

2. This is an application under Section 438 of Cr.P.C, 1973, praying for grant of pre-arrest bail to the accused/applicant, who is apprehending arrest in connection with SIC/VIG P.S. Case No. 15/2020 under Sections 468/471/120(B)

IPC read with Section 13(2) PC Act.

Case Diary has been received and I have perused the same.

3. Mr. T. T. Tara, the learned counsel for the petitioner has submitted that the present accused/petitioner is innocent and he is no way connected in the alleged offence. He was working as a Block Data Manager in the concerned office on contractual basis from 2013 to 2016 and the FIR of the instant case was lodged after 4(four) years i.e. in the year 2020. The present anticipatory bail application was moved before this Court on 06.12.2023 and the co-ordinate Bench of this Court granted the accused/ petitioner with the privilege of interim pre-arrest bail and in pursuant to the said interim pre-arrest bail order, he appeared before the I.O on 11.12.2023, 12.12.2023, 13.12.2023, 14.12.2023, 15.12.2023, 18.12.2023, 26.12.2023 & 02.01.2024. More so, his name is not reflected in the F.I.R. But, after receiving a summon from the authority concerned on 15.11.2023 in connection with the present case, the petitioner had reasonable apprehension of arrest and accordingly, the present petition was filed by him. He already co-operated with the I.O in the investigation of this case and he appeared before the investigating agency as and when he was called for. Further he is ready and willing to co-operate in the investigation of this case if he is granted with the privilege of pre-arrest bail. The prime accused persons of this case are already released on default bail on 22.12.2023 and hence, considering the case of the present petitioner on the same footing and also considering the law of parity, he may be granted with the privilege of pre-arrest bail. The accused being the permanent resident of his addressed locality and having sufficient movable and immovable properties, there is no chance of absconding if he is granted with privilege of pre-arrest bail, rather, he will co-

operate with the I.O in further investigation of this case.

4. In this context, Mr. O. Pada, learned Special Public Prosecutor, submitted that there are sufficient incriminating materials collected by the I.O against the present accused/ petitioner showing his direct involvement in the alleged offence. He was an employee of National Health Mission, Naharlagun and he collected money from some candidates of nursing and it was provided to the prime accused- Shri Mukunda Madhab Boruah for obtaining the fake nursing certificates and also obtaining some fake documents to obtain certificates of nursing. Further the learned Special Public Prosecutor has submitted that the present accused/petitioner collected money from 22 numbers of candidates @ Rs. 80,000/- (Rupees Eighty thousand) only per candidate and amounting to Rs. 17,60,000/- (Rupees Seventeen lakhs sixty thousand) only which were given to Shri Mukunda Madhab Boruah, the prime accused. Further from the statement of some witnesses/candidates, it is seen that he used to collected Rs. 1.5 Lakhs from the candidates and gave Rs. 80,000/- (Rupees Eighty thousand) only to other prime accused Shri Mukunda Madhab Boruah and he keep the remaining amount with him. The present accused/appellant was also working as a broker who hails from the State of Arunachal Pradesh and he procured the fake nursing certificate shown to be enlisted by Assam Nursing Council. Such certificates were supplied to the candidates of nurses of Arunachal Pradesh and based on such certificates, the present accused/petitioner also facilitate the candidates to get enrolled in Arunachal Pradesh Nursing Council and later on absorbed in Government Service as ANM/GNM under National Health Mission in Department of Health, Government of Arunachal Pradesh, Naharlagun.

5. The learned Special Public Prosecutor has further submitted that there was

Fact Finding Committee and as per the said Committee, all the certificates and documents which were produced by the candidates were fake and on the basis of which all the candidates were already terminated from the service.

6. The learned Special Public Prosecutor further submitted that it was difficult on the part of the investigating agency also to identify the persons as he also changed his name. He was earlier known as Tapung Jeke, who worked as a Block Data Manager, Giba Block, but later on, he had changed his name to Niapung Hengam by swearing an affidavit. The learned Special Public Prosecutor further raised the point that while interim pre-arrest bail was granted to the present accused/petitioner, this Court observed that there were sufficient incriminating materials against the accused/petitioner, however, considering his health condition, he was allowed to remain on interim pre-arrest bail. But he seemed to be physically fit and hence, it is accordingly claimed that he appeared on several occasion before the investigating agency.

7. Mr. O. Pada, learned Special Public Prosecutor, further submitted that from the materials collected by the I.O, it also reveals that the present accused/petitioner had a meeting with the prime accused Shri Mukunda Madhab Boruah at Gauhati to discuss as to how the witnesses can be managed and thus, it is seen that he had already tampered and hampered in the investigation as well as the evidence of the witnesses.

8. The learned Special Public Prosecutor 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, but there will also be a risk with the patient if they

have to get a treatment from the nurses which are not even qualified and got the job by producing some fake educational documents as well as the fake nursing certificates.

9. Further it is submitted by the learned Special Public Prosecutor that the accused is also not co-operating in the investigation of this case as he is under interim protection, which otherwise will also hamper the proper investigation of this case and probability of tampering the other witnesses by the present accused/petitioner cannot be denied and accordingly, the learned Special Public Prosecutor prayed to dismiss the present anticipatory bail application and also prayed to vacate the order of interim pre-arrest bail granted on 06.12.2023.

10. After considering the submission made by the learned counsel for both sides, I have perused the Case Diary as well as the report submitted by the I.O.

11. From the submission made by the learned Special Public Prosecutor and from the materials collected by I.O, it is seen that there are sufficient incriminating materials against the present accused/petitioner showing his direct involvement in alleged offence. He was acting as a broker of Arunachal Pradesh and in connivance with the prime accused, he collected some fake documents as well as the fake nursing certificates shown to be issued by Assam Nursing Council and also taking the advantage of his job in Health Mission, he also facilitates the candidates to get absorbed in government service as ANM/GNM under National Health Mission and facilitate the government job for securing the post of ANM and GNM. From the note of the I.O as well as from the materials collected by the I.O in the Case Diary, it also reveals that he obtained fake documents and fake nursing certificates for 22 numbers of candidates and those were issued to them by taking 1.5 Lakhs from each candidate and out of which

he gave Rs.80,000/- (Rupees Eighty thousand) only to the prime accused for onward transmission to the other persons who are also associated with the alleged crime.

12. It is also reported by the I.O that there was a physical presence of the present accused/petitioner before the I.O in several occasion but he refused to disclose anything about the facts of the case and taking the advantage of interim protection, he does not disclose anything before the investigating agency, rather, he is trying to influence the witnesses and thus, hampering the proper investigation of this case.

13. In this context, the Judgment of the Hon'ble Apex Court passed in ***P. Chidamdaram vs. Directorate of Enforcement***, reported in **(2019) 9 SCC 24** can be relied on, wherein, the paragraph of 74, 75, 78, 79, 80, 81 & 83 are read 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 Jitamalji 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."

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

15. 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.”

16. 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 is not a fit case where the privilege of pre-arrest bail can be granted to the present accused/ applicant and accordingly, the order of interim pre-arrest bail granted to the accused/applicant on 06.12.2023 is hereby stands vacated. Consequently, the present anticipatory bail application stands rejected.

In terms of above, this anticipatory bail application stands disposed of.

The Case Diary be sent back.

JUDGE

Comparing Assistant