

GAHC010005532024



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

Case No. : Bail Appln./89/2024

SAFIUR RAHMAN MOLLAH
S/O ABDUL LATIF MOLLAH
R/O BRAHMAPUTRA HOUSING COMPLEX BLOCK H, BISNU RABHA PATH,
BHETAPARA, DIST. KAMRUP (M), ASSAM, PIN-781028

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. BHASKAR DUTTA, SENIOR ADVOCATE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

18.01.2024

Heard Mr. B. Dutta, learned Senior counsel, assisted by Mr. J. Das, learned counsel for the accused and Mr. R.J. Baruah, learned Addl. Public Prosecutor for the State respondent.

2. This application, under Section 439 Cr.P.C. is preferred by accused, namely,

Safiur Rahman Mollah, who has been languishing in jail hazot in connection with Crime Branch P.S. Case No. 09/2023, under Sections 120(B)/419/420/468/471/409 of the IPC, since 12.12.2023, for grant of bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by Inspector Chandan Das of Cyber P.S., Panbazar on 03.12.2023. The essence of allegation made in the FIR dated 03.12.2023 is that during investigation of Cyber P.S. Case No. 12/2023 under Sections 120(B)/419/420 of the IPC read with Sections 66C/66D of the IT Act, 2000, added Sections 409/468/471 of the IPC, it had been found that some fictitious mutation orders were passed vide mutation file No. MET/DIS/2022-23/96042/OMUT and it had also been found that the mutation order was passed on the basis of fake deed being deed No. 6268/95 dated 31.12.1995, in the name of buyer Ansar Ali and the name of seller Jatindra Nath Goswami and Debendra Nath Goswami of Paltan Bazar.

4. Mr. Dutta, learned Senior counsel for the accused submits that this is the second bail application filed by the accused and the earlier one, being Bail.Appln. No. 4586/2023 was dismissed on 04.01.2024. Mr. Dutta further submits that the ground for filing this second application is that at the time of hearing of the first application, some material parts could not be placed before this Court and the same are:

(i) The accused was arrested only on the basis of the statement of co-accused, which according to him is not admissible in view of the judgment of the Hon'ble Supreme Court in the case of *Dipakbhai Jagdishchandra Patel Vs. State of Gujarat & Anr.*, reported in *2019 SCC OnLine SC 588*,

(ii) All the accused were allowed to go on bail by this Court and on the ground of parity also, the accused is entitled to be released on bail, and

(iii) The accused has been languishing in jail hazot for the last 37 days and in the meantime, the investigation might have progressed significantly and that the accused is ready to cooperate with the investigating agency and will abide by any condition imposed by this Court, and therefore, it is contended to allow this application.

5. On the other hand, Mr. R.J. Baruah, learned Addl. Public Prosecutor submits that some materials are there in the case diary against the accused and at the stage of investigation, the statement of the co-accused can be taken into account, and the investigation is going on, and therefore, Mr. Baruah has opposed the application.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the application and the documents placed on record and also perused the case diary with the assistance of Mr. R.J. Baruah, learned Addl. Public Prosecutor.

7. The case diary indicates that the I.O. has examined several witnesses and also collected some documents and as such, he has achieved significant progress in the investigation of the case. Though Mr. B. Dutta, the learned Senior Counsel for the accused submitted that the statement of the co-accused is hit by Section 162 Cr.P.C. as held by the Hon'ble Supreme Court in the case of *Dipakbhai Jagdishchandra Patel (supra)*, said observation was made while dealing with an appeal and as such the same would not advance his case. Indisputably, some of the co-accused have already been enlarged on bail by this Court.

8. Having considered above, and also considering the submission of learned Advocates of both sides as well as the progress of investigation, further custodial detention of the accused seems to be not warranted here in this case,

and therefore, this Court is inclined to allow the application. It is provided that on furnishing a bond of Rs. 50,000/- with one surety of like amount, to the satisfaction of the learned CJM, Kamrup(M), Guwahati, the accused be enlarged on bail.

9. In terms of above, this application stands disposed of.

10. Case diary be returned.

JUDGE

Comparing Assistant