

GAHC010042622024



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

Case No. : AB/553/2024

KAMAL CHNADRA NATH
S/O LATE BANGSHIDHAR NATH,
VILL. AND P.O.- HABIBARRANGABARI, DIST.- MORIGAON, ASSAM, 782106.

VERSUS

THE STATE OF ASSAM
REP. BY P.P., ASSAM.

Advocate for the Petitioner : MS B SHARMA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 10.04.2024

- 1.** Heard Mr. D. K. Nath, learned counsel for the petitioner. Also heard Mr. B. B. Gogoi, learned Additional Public Prosecutor for the State.
- 2.** This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, *Kamal Chandra Nath* who is apprehending his arrest in connection with Basistha P.S. Case No. 85/2024 under Sections 406/420 of the Indian Penal Code.

3. The gist of accusation against the present petitioner is that one Ms. J. Bora, on 09.02.2024, had lodged an FIR before the Officer-In-charge of Basistha Police Station, *inter alia*, alleging that she came to be acquainted with the present petitioner through one Mr. Diganta Borah and the petitioner introduced himself as a senior member of Bharatiya Janta Party and also assured the informant he could arrange a flat from the Housing Board and demanded of Rs.37,00,000/- (Rupees Thirty Seven Lakh). The informant has also alleged that she had paid the amount of Rs.37,00,000/- (Rupees Thirty Seven Lakh) to the present petitioner on various occasions. However, the petitioner has not been able to arrange the flat as promised by him in return for the amount paid to him.

4. The learned counsel for the petitioner has submitted that the allegations levelled against the present petitioner in the FIR are not true. It is also submitted that though the allegations is that Rs.37,00,000/- (Rupees Thirty Seven Lakh) was paid to the present petitioner, however, no written agreement to that effect has been made by the informant which is quite unnatural while dealing with such a huge amount of money. It is also submitted by the learned counsel for the petitioner that no documents are there to show that the present petitioner has taken the said amount through bank transfer or through any other mode.

5. On the other hand, learned Additional Public Prosecutor has produced the case diary of Basistha P.S. Case No. 85/2024 and has submitted that the only material against the present petitioner is the oral testimony of the informant. However, no document was produced before the Investigating Officer to show that she had transferred an amount of Rs.37,00,000/- (Rupees Thirty Seven Lakh) to the petitioner on various occasion.

6. Considering the materials in the case diary, this court is of considered opinion that the materials available against the present petitioner in the case diary does not justify his custodial detention, if he otherwise cooperates in the investigation.

7. In view of the above, the above named petitioner is hereby directed to appear before the Investigating Officer of Basistha P.S. Case No. 85/2024 within a period of ten days from the date of this order and cooperate in the investigation. If he does so, within the stipulated period of time, in the event of his arrest, in connection with Basistha P.S. Case No. 85/2024, the above named petitioner shall be allowed to go on bail of Rs.30,000/- (Rupees Thirty Thousand) with one surety of like amount subject to the satisfaction of the arresting authority with following conditions:-

- i. That the petitioner shall cooperate in the investigation and shall appear before the Investigating Officer;
- ii. That the petitioner shall not directly or indirectly make any inducement, threat or promise to any other persons who may be acquainted with the facts of the case so as to dissuade such persons from disclosing such facts before the Investigating Officer;
- iii. That the petitioner shall appear before the Investigating Officer as and when so required for the sake of fair investigation of this case.

8. With the above observation, this anticipatory bail application is hereby disposed of.

JUDGE

Comparing Assistant