

GAHC010042722024



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

Case No. : Bail Appln./563/2024

NIRHANDRA THAOSEN
S/O LATE SONOTH THAOSEN R/O HOUSE NO. 3, BYE LANE NO. 3, LNB
ROAD, HATIGAON, POLICE STATION HATIGAON, DIST. KAMRUP (METRO),
ASSAM PIN-781038

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. V A CHOWDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 29.02.2024

Heard Mr. A. M. Bora, learned Senior Counsel assisted by Mr. V. A. Choudhury, learned counsel for the petitioner. Also heard Ms. A. Begum, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 439 of the Code of Criminal Procedure, 1973 praying for grant of bail to the accused/petitioner, who has been languishing in jail hajot in connection with Gorchuk P.S. Case No. 375/2023, under Sections 120B/420/407/468/409 of the Indian Penal Code.

3. Case Diary has been received. Perused the same. Heard both sides.

4. It is submitted by Mr. A. M. Bora, learned Senior Counsel for the petitioner, that the petitioner is a Deputy Registrar in the Revenue (Registration) Department, Government of Assam. He joined in the said service as Sub-Registrar in the year 1992. Accordingly he was placed and posted in various Districts as Sub-Registrar during his service carrier. In the year 2017, the petitioner was transferred on promotion as Sr. Sub-Registrar, Kamrup(M), Guwahati and he served in the said post till 27.07.2023. Thereafter, he was promoted to the rank of Deputy Registrar and transferred as Deputy Registrar, Nagaon. He has been serving on the said post till date without any blemish or any complaint from anybody or from any corner. Further it is submitted that the petitioner was earlier arrested in connection with Geetanagar P.S. Case No. 309/2023, under Sections 120B/448/468/417/420/406/409 of the Indian Penal Code and after his arrest, he was forwarded and produced before the learned Chief Judicial Magistrate, Kamrup(M) on 30.12.2023 and since then, the accused is languishing in jail hajot. Thereafter another F.I.R. was lodged on 27.12.2023 before the Gorchuk Police Station with the allegation of fraudulent mutation on the strength of fake Sale Deed, which was shown to be executed in favour of

one Jakir Hussain. On receipt of the said F.I.R., Gorchuk P.S. Case No. 3375/2023, under Sections 120B/420/407/468/409 of the Indian Penal Code, was registered and on 02.02.2024, a prayer for shown arrest was made by the I.O. and accordingly, he was produced before the learned Court below on 06.02.2024 and the prayer for shown arrest was allowed and he was remanded for police custody in the present case for 6 (six) days. After completion of the police remand, he was produced before the learned Court below on 12.02.2024 and since then, he is in custody in connection with the Gorchuk P.S. Case No. 375/2023. Though he was shown arrest in connection with the said Gorchuk P.S. Case No. 375/2023, but he is languishing in jail hajot in connection with Geetanagar P.S. Case No. 309/2023 since 30.12.2023.

5. It is further submitted by Mr. Bora, learned Senior Counsel, that the instant case was registered on 01.12.2023 and the prayer for shown arrest was made on 02.02.2024 while the accused was in custody in connection with Geetanagar P.S. Case No. 309/2023, but on production of the accused before the learned Court below, there is not a single utterance of the alleged incident of the present case. No intimation was given to the learned Court below and the information was withheld by the Investigating Authority. Rather, it transpires the fact that the whole prosecution case is fabricated and afterthought. In this context, Mr. Bora, learned Senior Counsel for the petitioner, relied on a decision of this Court reported in **(1987) 2 GLR 292 (A. Loso Vs. State of Manipur)**, wherein it has been held that it is the duty of the police to disclose, the particulars of pending case or cases of an accused, in which he is not yet been arrested, to the Magistrate before whom Police forwards the accused on arrest in a particular case, so that the accused comes to know that he is likely to be

arrested at any time in those pending cases.

6. The learned Senior Counsel for the petitioner further relied on a decision of Hon'ble Apex Court passed in **Uday Chand & Ors. Vs. Sheikh Mohammad Abdullah, Chief Minister, J & K & Ors.**, reported in **(1983) 2 SCC 417**, wherein the Hon'ble Apex Court has deprecated the practice of withholding information from the Court about the requirement to arrest the accused in other cases at the time of consideration of bail of the said accused.

7. Further it is submitted by Mr. Bora, learned Senior Counsel, that there are 2 (two) other Deputy Registrars and Sub-Registrars attached in the Office and all the Registrars were having concurrent jurisdiction and the present petitioner generally used to put his signature on the Sale Deed etc. which are considered as genuine one. The entire case rests on the documentary evidence and most of the documents are already been seized by the I.O. in connection with the present case and hence, tampering with the documents or hampering the investigation does not arise at all.

8. The learned Senior Counsel further submitted that the wife of the petitioner had been suffering from chronic severe kidney disease and has undergone organ (kidney) transplantation on 05.12.2023 as an immediate life saving measure and presently under intensive medical observation. There is none to look after his wife in absence of the present petitioner and apart from that he is suffering from various health issues like hypertension, heart diseases and he is under treatment from Cardiologist. Furthermore, the accused/petitioner is innocent and no way connected with the commission of

the alleged offence. However, he is ready and willing to co-operate with the I.O. in the further investigation of the case if he is enlarged on bail.

9. In this context, Ms. A. Begum, learned Additional Public Prosecutor, has submitted that there are sufficient incriminating materials against the present accused/petitioner showing his direct involvement in the alleged offence and in all the connected cases also, the *modus operandi* is same where the Circle Officer and other staffs and employees of the Office of Sub Registrar are involved. There is also probability of hampering and tampering with the investigation and accordingly the learned Additional Public Prosecutor raised objection in granting bail to the present accused/petitioner.

10. After hearing the submissions made by the learned counsels for both sides, I have also perused the case record as well as the Case Diary. It is seen that the present accused/ petitioner was under police remand for a considerable period for almost about 6 days and thereafter he was in judicial custody and from the materials available in the Case Diary, it is seen that there was no subsequent prayer made by the I.O. for further interrogation of the present accused/petitioner inside the jail premises after he was brought before the learned Judicial Magistrate First Class on completion of his police remand. In connection with the present case, he is in custody for last 22 days and thus, the I.O. got ample opportunity to interrogate the accused/petitioner keeping him in custody. The Case Diary also reveals that there is sufficient progress in the investigation and most of the relevant documents are also seized in connection with this case. Further it is seen that there are some other cases which were

also filed on the same facts and circumstances of this case wherein the allegation of fake registered Sale Deed and mutation was brought by the informant.

11. In view of above, considering the entire circumstances of this case and also considering the view of the Hon'ble Apex Court in the case of **Uday Chand (supra)**, I am of the view that the I.O. has got ample opportunity to interrogate the accused/petitioner keeping him in custody in connection with this case and hence, I find that further custodial interrogation of the accused/petitioner seems to be not necessary here in this case.

12. Accordingly, it is provided that on furnishing a bond of Rs. 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the learned Chief Judicial Magistrate, Kamrup (M), Guwahati, the accused/petitioner, namely, Nirhandra Thaosen, be enlarged on bail, subject to the following conditions:

- (i) that the petitioner shall fully co-operate with the investigation of the case and shall appear before the Investigating Officer as and when required in connection with the investigation of the aforesaid P.S. Case;
- (ii) that the petitioner 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 from disclosing such facts to the Court or to any police officer; and

- (iii) that the petitioner shall not leave the jurisdiction of the learned Chief Judicial Magistrate, Kamrup (M), Guwahati, without prior permission.

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

The Case Diary be sent back.

JUDGE

Comparing Assistant