

GAHC010047552024



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

Case No. : Bail Appln./674/2024

RAJU AHMED
S/O PAINUR ALI
R/O HOUSE NO. 137, NOWAPARA, BAGHRBARI
P.O. PANJABARI
P.S. SATGAON
DIST. KAMRUP (METRO), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, GOVT. OF ASSAM

Advocate for the Petitioner : MR. K K DEKA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 01.04.2024

- 1.** Heard Mr. B. D. Goswami, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Additional Public Prosecutor for the State.
- 2.** This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, *Raju Ahmed* who has been

detained behind the bars since 09.02.2024 (for last 52 days) in connection with Jagiroad P.S. Case No. 300/2023 under Sections 420/406/468/471 of the Indian Penal Code.

3. The gist of accusation is that the authorized signatory of Long Span Structures Private Limited has lodged an FIR before the Superintendent of Police, Morigaon on 27.09.2023 complaining against forgery of the government records by the one Nitul Das. The name of the present petitioner has not been mentioned in the said FIR, however, in the forwarding report dated 09.02.2024 filed by the Investigating Officer of the Jagiroad P.S. Case No. 300/2023 at the time of production of the present petitioner after his arrest before the Court of Chief Judicial Magistrate it was alleged therein that the petitioner was found involved in making forged government documents including NOC, sale deeds and power of attorneys, etc.

4. The learned counsel for the petitioner has submitted that the petitioner has not been named in the FIR and the allegations levelled in the forwarding report against the present petitioner are not true. It is also submitted by the learned counsel for the petitioner that at the same time arrest of the petitioner the mandate of complying with the provisions of Section 41A of the Code of Criminal Procedure, 1973 was not followed in violation of the guidelines of the Apex Court in the case of “**Arnesh Kumar Vs. State of Bihar and Anr.**” reported in “**(2014) 8 SCC 273**”.

5. The learned counsel for the petitioner has also submitted that one of the co-accused named in the forwarding report, namely, Jiban Medhi has already been granted anticipatory bail by this court by order dated 05.01.2024 passed in AB No. 3928/2023. The learned counsel for the petitioner has also submitted that though in the forwarding report, the officer forwarding the

accused before the court has stated that the mandate of Section 41A of the Code of Criminal Procedure, 1973 was not followed as the petitioner was not a habitual offender, however no other case is pending against the present petitioner in the Jagiroad Police Station as appears from the observations made by a Co-ordinate Bench in AB No. 4354/2023 in order dated 10.01.2024.

6. The learned counsel for the petitioner has also submitted that considering the period of detention already undergone by the present petitioner, he may be allowed to go on bail. It is also submitted that the petitioner would cooperate with the Investigating Officer during the course of investigation.

7. On the other hand, learned Additional Public Prosecutor objected to grant of bail on the ground that there are incriminating materials against the present petitioner on record and even the co-accused given implicating statement against the present petitioner.

8. I have considered the submissions made by learned counsel for the parties and have also perused the materials available on record including the case diary of Jagiroad P.S. Case No. 300/2023.

9. It appears that the reason shown for non-compliance with the mandate of the Section 41A of the Code of Criminal Procedure, 1973, in the forwarding report by the arresting authority are not valid grounds and the same may not be accepted for non-compliance with the guidelines of the Apex Court in ***Arnesh Kumar Vs. State of Bihar*** (supra). The petitioner is entitled to get bail on that ground alone. Otherwise also, considering the fact that the petitioner has been detained behind the bars for last 52 days, this Court is of the considered opinion that further custodial detention of the present petitioner may not be necessary for fair completion of the investigation of Jagiroad P.S. Case No. 300/2023, if he

cooperates with the Investigating Officer.

10. In view of the above, the above named petitioner is hereby allowed to go on bail of Rs.30,000/- (Rupees Thirty Thousand) with one surety of like amount subject to the satisfaction of the learned Chief Judicial Magistrate, Morigaon with following conditions:-

- i. That the petitioners shall cooperate in the investigation and shall appear before the Investigating Officer;
- ii. That the petitioners 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.

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

12. Send back the case diary.

JUDGE

Comparing Assistant