

GAHC010064862024



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

Case No. : Bail Appln./918/2024

SRI KRISHNA NAND UPADHYAY
S/O LATE RAM BACHAN UPADHYAY, PERMANENT RESIDENT OF SEWALI
PATH, HOUSE NO. 15 NEAR CHOCLATE FACTORY, PO AND PS FATASHIL
AMBARI, DIST KAMRUP M ASSAM 781025 AND PRESENTLY RESIDING AT
OLD FIRE BRIGADE LANE, ABG PRIME PARK CHATTRIBARI, PS PALTAN
BAZAR, DIST KAMRUP M ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP ASSAM

Advocate for the Petitioner : MR. U K BARMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

19.04.2024

1. Heard Mr. Z. Kamar, learned senior counsel assisted by Mr. D. Talukdar, learned counsel for the petitioner. Also heard Mr. B. B. Gogoi, learned Additional Public Prosecutor for the State. **2.**

2. This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Sri Krishna Nand Upadhyay, who has been detained behind the bars since 12.03.2024 (for last 39 days) in connection with Paltanbazar P.S. Case No. 26/2024 under Sections 379/120(B) with added Sections 387/411 of the Indian Penal Code.

3. The gist of accusation in this case is that on 23.01.2024, one Nawal Sahani had lodged an FIR before the Officer-In-Charge of Paltanbazar Police Station, *inter alia*, alleging that the informant has a business of courier by the name and style of Kamrup Couriers located at Nandan Gali, Nepali Mandir. It is alleged that on 22.01.2024, two persons came to the said Kamrup Couriers with some consignment for sending the same to Shillong and when the informant asked about the documents of the said consignment, both the persons left the consignment there on the pretext that they would be coming back soon. However, they did not return, and on suspicion the informant checked the consignment. On checking of the consignment, it was found that 185 numbers of mobile phones from different companies were there. Thereafter, the first informant lodged the FIR. On receipt of the said FIR, Paltanbazar P.S. Case No. 26/2024 was registered.

4. During the course of the investigation, the present petitioner, who is an ASI of Police at Paltanbazar Police Station was arrested on 12.03.2024 with an allegation that one of the co-accused, namely, Bhavesh Sharma had made a statement that the present petitioner had allowed the two accused persons, who were caught from a hotel, to let off after taking an amount of Rs.13,00,000/- (Rupees Thirteen Lakhs) from the said persons.

5. The learned Senior Counsel for the petitioner has submitted that the allegations made against the present petitioner are not true, and he has been

arrested merely on the basis of statement made by Bhavesh Sharma, who had also heard it from somewhere else.

6. The learned Senior Counsel for the petitioner has submitted that though for the offences involved in this case, the maximum punishment is not more than seven years hence, there is a requirement of issuance of notice under Section 41A of the Code of Criminal Procedure, 1973 before any arrest is made in connection with the case. However, in the instant case before arresting the present petitioner, who was a in service Police Officer, no notice under Section 41A of the Code of Criminal Procedure, 1973 was served on. Neither any reasons has been mentioned in the forwarding report as to why notice under Section 41A of the Code of Criminal Procedure, 1973 was not issued to the present petitioner.

7. The learned Senior Counsel for the petitioner has cited the ruling of the Apex Court in the Case of "**Satender Kumar Antil Vs. Central Bureau of Investigation & Anr.,**" reported in "**(2022) 10 SCC 51,**" wherein it was observed by the Apex Court that if the mandate of Section 41A of the Code of Criminal Procedure, 1973 as elaborated in the judgment of the Apex Court in the case of "**Arnesh Kumar Vs. State of Bihar and Anr.**" reported in "**(2014) 8 SCC 273**" is not followed. The arrested accused persons would be entitled to get bail on that ground.

8. The learned Senior Counsel for the petitioner has submitted that though in this case Section 387 and Section 411 of the Indian Penal Code were added after arrest of the present petitioner. However, no materials are there on record to implicate the present petitioner either under Section 411 or under Section 387 of the Indian Penal Code.

9. The learned Senior Counsel for the petitioner has also submitted that

otherwise also the petitioner has already been detained behind the bars for last 39 days and considering the period of detention, he may be allowed to go on bail.

10. The learned Senior Counsel for the petitioner has also submitted that the Government of Assam in pursuant to the directions of the Apex Court has also issued the standing order dated 15th May, 2023 wherein, standard operating procedure has been given as to in what manner notice under Section 41A has to be issued in a case where the punishment is upto 7 years only.

11. It is also submitted by the learned Senior Counsel for the petitioner that the mandate of the said notice has not been followed in the present case.

12. On the other hand, learned Additional Public Prosecutor has vehemently opposed the granting of bail to the present petitioner and has produced the case diary of Paltanbazar P.S. Case No. 26/2024, which was called for in connection with this case. He has submitted that one of the co-accused, namely, Bhavesh Sharma, in his statement has clearly implicated the present petitioner for taking an amount of Rs.13,00,000/- (Rupees Thirteen Lakhs) in lieu of letting two co-accused persons go after they were found in a Hotel.

13. Learned Additional Public Prosecutor has also submitted that the Investigating Officer while forwarding the present petitioner before the Magistrate has mentioned about the checklist which the Investigating Officer is required to prepare at the time of arresting the accused in pursuant to the standing order issued by Government of Assam as mentioned by the learned Senior Counsel for the petitioner.

14. I have considered the submissions made by the learned counsel for both the parties and have perused the materials available on record, including the case diary of Paltanbazar P.S. Case No. 26/2024.

15. On perusal of the forwarding report by which the present petitioner was forwarded after his arrest before the Magistrate, it appears that the arresting authority has mentioned in his forwarding report regarding check-list prepared in pursuant to the directions of the Apex Court in the case of "**Arnesh Kumar Vs. State of Bihar and Anr.** (supra)." However, the Magistrate allowed the remand of the present petitioner on 12.03.2024, in his said order has not mentioned about perusing the said check-list in the said order.

16. It also appears that in the forwarding report dated 12.03.2024, the arresting authority has not mentioned as to why the notice under Section 41A of the Code of Criminal Procedure, 1973 was not given to the present petitioner and what necessitated dispensing with the said notice and making arrest of the present petitioner in this case.

17. Further, on perusal of the case diary, materials under Section 379/411 of the Indian Penal Code are not found against the present petitioner at this stage.

18. Moreover, considering the fact that the petitioner has already been suspended by his parent department as informed by the learned Senior Counsel for the petitioner as well as considering the period of detention already undergone by the present petitioner and the nature of allegations made against him, this court is of the considered opinion that his further custodial detention may not be necessary for fair completion of the investigation of Paltanbazar P.S. Case No. 26/2024, if he co-operates with the Investigating Officer.

19. In view of above, the above named petitioner is hereby directed to be released on bail on furnishing a bond of Rs. 30,000/- with a suitable surety of like amount to the satisfaction of the learned Chief Judicial Magistrate, Kamrup (Metro) with conditions that:-

i. the petitioner shall appear before the Investigating Officer of Paltanbazar P.S. Case No. 26/2024, as and when so required for the sake of fair completion of the investigation;

ii. That the petitioner shall not directly or indirectly make any inducement, threat, or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts before the trial court in the trial pending against the present petitioner;

20. With the above observations, this bail application is hereby disposed of.

21. Send back the case diary.

JUDGE

Comparing Assistant