

GAHC010073752024



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

Case No. : Bail Appln./1057/2024

HARISH BANSAL
S/O SRI TEJ PAL BANSAL
R/O W5/27 AND W-10 C/12, RESPECTIVELY OF WESTERN AVENUE, SAINIK
FARM, NEW DELHI- 110062

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 30.04.2024

Heard Mr. K.N. Choudhury, learned Senior counsel assisted by Mr. N. Gautam, learned counsel for the petitioner. Also heard Mr. A. K. Bhuyan, learned counsel for the informant and Mr. M. Phukan, learned Public

Prosecutor, Assam.

2. This is an application filed under **Section 439 Cr.P.C.**, seeking bail by the accused-petitioner, namely, **Harish Bansal**, in connection with **CID P.S Case No. 16/2023**, registered under Section **120B/255/256/257/259/260/406/417/419/420/463/465/466/468/471/472/474/506 IPC r/w Section 7(1) and 7(2) of State Emblem of India (Prohibition of Improper Use) Act, 2005 and added Section 467 IPC.**

3. The factual matrix leading to this bail application is that on 10/10/2023, an FIR has been lodged by one Mr. Kamal Sabharwal, representative of a company called Sabharwal Trading India Pvt. Ltd. It is alleged in the FIR that the present petitioner along with other accused conspired to deceive the complainant and his associates into believing in the authenticity of a Government contract, leading to a financial loss of the complainant.

4. It was urged by the learned counsel for the petitioner that the petitioner has been languishing in judicial custody for last 76 days, since his arrest on 04/02/2024. In the meantime, on 09/02/2024, after the arrest of the present petitioner, charge-sheet has been laid against three co-accused persons. It is pointed out by learned counsel for the petitioner that except certain whatsapp messages wherein the accused/petitioner had only enquired about the status of delivery and payments, there was no other allegation against the present petitioner. The charge-sheet contains no material to implicate the present petitioner.

5. It is further submitted by the learned counsel for the petitioner that the petitioner did not engage in any fraudulent or deceitful actions or false representations about the project of Assam Government. According to the learned counsel for the petitioner, the investigation in this case is nearly in completion, the charge sheet stands filed and no recovery, monetary or otherwise has been made from the possession of the petitioner. It is further submitted that none of the witnesses have made any incriminating statements against the accused/petitioner either. Under such backdrop, the learned counsel for the petitioner has prayed that the petitioner may be enlarged on bail.

6. Another contention raised by the learned counsel for the petitioner is that the petitioner has been suffering from hemorrhoids, necessitating ongoing medical treatment. The accused/petitioner requires healthy diet due to his health condition, which is not possible inside the jail.

7. It is further submitted by learned counsel for the petitioner that the complainant is equally responsible for the alleged offence as it appears that the entire transaction was made without inviting any tender. It is a fundamental principle of law that an individual is presumed innocent unless proved guilty in accordance with law. The contents of FIR discloses that the whole case of the complainant is based on documentary evidence which have already been seized by the police. Considering, the nature of allegations made in the FIR, there is no requirement of further custodial interrogation of the accused/petitioner.

In support of his submission, learned counsel has relied on the following case laws –

- i. (2020) 13 SCC 791 (P. Chidambaram vs. Directorate of Enforcement).
- ii. (2022) 10 SCC 51 (Satender Kumar Antil vs. CBI and another).
- iii. (2019) SCC Online SC 2074 (Deepak Saran vs. A.C.B, CBI).

8. In response, learned PP has vehemently opposed in granting bail to the accused/petitioner. It is submitted that the co-accuse Dilip Singh Baghel and Mr. Shashwant Singh Bundela are yet to be arrested. Though charge sheet has been submitted against three co-accused but investigation has not yet been completed against the present petitioner and his brother Khushdeep Bansal. Under such backdrop, it cannot be said that the investigation is complete in all respects.

9. According to Mr. A. K. Bhuyan, learned counsel representing the informant, has argued in the same tune by stating that since investigation is still going on, so far it relates to the present petitioner and other accused, the question of tempering of evidence and influencing of witnesses cannot be nullified at all. It is further submitted that though bail was granted to co-accused Pallabi Thakuria but on consideration of the length of detention of 86 days in judicial custody. Accordingly, learned counsel for the informant prays for dismissal of the bail application.

In support of his submission, learned Public Prosecutor has cited the following case laws –

- i. (1999) 3 SCC 259 (Rajesh Bajaj vs. State, NCT of Delhi).
- ii. (2009) 2 SCC 281 (Vaman Narain Ghiya vs. State of Rajasthan).

- iii. (2004) 7 SCC 525 (Chaman Lal vs. State of U.P.).
- iv. (2002) 3 SCC 598 (Ram Govind Upadhyay vs. Sudarshan Singh and others).
- v. (2012) 4 SCC 134 (Dipak Shubhahchandra Mehta vs.CBI) etc.

10. Perused the case diary placed before this court.

11. It is well settled law that while dealing with the case in respect of the financial and economic fraud, the court has to adopt a different approach as the economic offences are distinct and stand alone than the other offences committed under the IPC. It is also well settled that economic offences, constitute a class apart and need to be visited with a different approach in the matter of bail. While granting bail, the court has to keep in mind the nature of accusation, magnitude and gravity of offence, in support of accusations.

12. Hon'ble Supreme Court in the case of **Y.S. Jagan Mohan Reddy vs. CBI**, reported in **(2013) 7 SCC 439** has opined as under –

“.....The economic offences having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.”

13. Hon'ble Supreme Court in the case of **State of Bihar and another vs. Amit Kumar @Bachcha Rai**, reported in **(2017) 13 SCC 751** and **Nimmagadda Prasad vs. CBI** reported in **(2013) 7 SCC 466**, also took

the same view by stating that usually socio economic offence has deep-rooted conspiracies affecting the moral fiber of the society and causing irreparable harm, needs to be considered seriously.

14. In the case of **Rohit Tandon vs. Directorate of Enforcement, (2018) 11 SCC 46**, the Hon'ble Supreme court has again reiterated the consistent view that the economic offence having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences, affecting the economy of the country as a whole.

15. Reverting to the case in hand, though charge sheet has been filed against three co-accused but investigation is still going on against the present petitioner and other accused persons. Grant of bail at this stage of investigation may frustrate the investigating agency in collecting the useful information and also the materials which might have been concealed.

16. Considering the allegations in the FIR as well as the documents available in the case diary, nature of offence in which the huge money of the complainant was allegedly siphoned off by the accused/petitioner in furtherance of criminal conspiracy along with other co-accused, this Court is not inclined to grant bail to the accused/petitioner.

17. Hence, the bail application is rejected.

18. Send back the case diary.

JUDGE

Comparing Assistant