

GAHC010075262024



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

Case No. : AB/993/2024

PUSHPENDRA KUMAR AND ANR.
S/O-CHAMAN SINGH, RESIDENT OF TEHSIL- MODINAGAR, DIST.-
GHAZIABAD, UTTAR PRADESH, PIN-201206

2: RAVINDER KUMAR
S/O-CHAMAN SINGH
RESIDENT OF TEHSIL- MODINAGAR
DIST.- GHAZIABAD
UTTAR PRADESH
PIN-20120

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. N J DUTTA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 10.04.2024

Heard Mr. N. J. Dutta, learned counsel for the petitioners. Also heard Mr. B. B. Gogoi, learned Additional Public Prosecutor appearing for the State of Assam.

This application under Section 438 of the Code of Criminal Procedure, 1973, has been filed by the petitioners Pushpendra Kumar and Ravinder Kumar, who are apprehending their arrest in connection with Dispur P. S. Case No. 2263/2022, under Section 420/406/506/34 of the Indian Penal Code.

The gist of accusation in this case is that on 10.10.2022, Gunjan Singh Baid, a proprietor of Global Enterprises had lodged an FIR against 5 numbers of accused persons including the present petitioner, *inter alia*, alleging that the informant is the proprietor of the Global Enterprises and they have supplied reinforced steel to the M/S JD Jadia Infrastructure Private Limited, of which the present petitioners are the directors. The cost of the reinforce steel supplied to the petitioners company to the tune of Rs.91,50,900/- (Rupees Ninety One Lakh Fifty Thousand Nine Hundred Only), however, it is alleged in the FIR that the petitioners had paid only an amount of Rs.4,00,000/-(Rupees four lakhs only) out of the outstanding amount and remaining amount has not yet been paid and the petitioners have intentionally cheated the informant's company and also have committed breach of trust.

Learned counsel for the petitioners have submitted that the petitioners are the directors of M/S JD Jadia Infrastructure Private Limited and their company was allotted a factory building project by Purabi Diary, Khanapara, which is also named as accused No.5 in the FIR and to complete the infrastructure project, the petitioners company requested the informant, i.e., Global Enterprises who supplied reinforced steel, to supply various types of steel to the petitioners company. The total cost of which amongst to Rs.91,50,900/- (Rupees Ninety One Lakh Fifty Thousand Nine

Hundred Only).

Learned counsel for the petitioners has submitted that out of the aforesaid amount, they have already made payment of Rs.33,00,000/- (Rupees Thirty three lakh only), on various occasions to the informant and only Rs.57,00,000/-(Rupees fifty seven lakh only) is remaining out. However, it is also submitted by the learned counsel for the petitioner that when the site engineer of the petitioners company inspected the sum of the steel supplied company of the informant and the same was found to be defective and substandard, then, the informants company was informed and requested to take back the defective materials and to calculate the exact value of materials to be returned, so as to settle the account balance.

Learned counsel for the petitioner has also submitted that in this regard, the informant's company has also served a legal notice to the petitioners company on 11.09.2023, a copy of which is annexed as Annexure No.3, which shows that the informants company intends to file a civil suit to recover the said amount.

Learned counsel for the petitioners has also submitted that in the meanwhile, the petitioners have received a notice under Section 41-A of the Code of Criminal Procedure from the police of Dispur Police Station, asking the petitioners to appear before the Dispur Police Station on 15.03.2024, which they defaulted.

It is also submitted by the learned counsel for the petitioners that the materials available on record would show that the dispute between the petitioners and the informant is predominantly of civil nature and the FIR has been lodged only to harass the present petitioner. It is also

submitted that the petitioners are ready to cooperate in the investigation. On perusal of the materials available before the court, it appears that the petitioners has admitted that an outstanding due of Rs.57,00,000/- (Rupees fifty seven lakh only) is there to be paid by the petitioners company to the informants company.

However, they have raised the contention regarding the defect and the fact that the materials supplied to them was found to be sub-standard and, therefore, requested the informant's company to settle the amount. It also appears that the informant has also issued a legal notice, indicating an intention to file a civil suit against the present petitioners. Form the material available on record, it appears that the dispute between the parties are civil in nature and, therefore, this court of the considered opinion that the custodial detention of the present petitioner may not be necessary in this case.

Hence, this anticipatory bail application is disposed of with the direction to the petitioners to appear before the Investigating Officer of Dispur P.S. Case No. 2263/2022, within a period of 10 days from the date of this order and co-operate in the investigation, if they do so, within the stipulated period of time, in the event of their arrest, in connection with Dispur P.S. Case No. 2263/2022, the above named petitioners shall be allowed to go on interim bail of Rs.30,000/- each with a suitable surety of like amount to the satisfaction of the arresting authority, subject to the conditions that:-

(i) the petitioners shall not directly or indirectly make any inducement, threat or promise to the informant or to any other persons who may be acquainted with the facts of the case so as to dissuade such

person from disclosing such facts before the Investigating Officer or to any Court; and

(ii) the petitioners shall co-operate in the investigation.

With above observations, this anticipatory bail application is disposed of.

JUDGE

Comparing Assistant