

GAHC010077802024



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

Case No. : AB/1012/2024

SANTOSH KUMAR CHOUDHURY
S/O SRI SHIV KUMAR CHOUDHURY, R/O VILL- RAJADWAR, NORTH
GUWAHATI-781030, P.S.-CHANGSARI, DIST- KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. S C KEYAL

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 20.04.2024

Heard Mr. S.C Keyal, learned counsel for the petitioner. Also heard Mr. M. Phukan, learned Public Prosecutor, State of Assam.

This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Santosh Kumar Choudhury who is

apprehending arrest in connection with CM's Vigilance P.S. Case No. 04/2024 under Section 13(1)(b)/13(2) of the Prevention of Corruption Act, 1988.

The accusation against the present petitioner is that the petitioner was serving as AB Constable in 6th APBN, Assam in the year 1999 and later on, he was transferred and posted in 1st APTF Bn. Dakurbhita, Goalpara on 18.03.2005 on promotion as ASI/Steno. On 02.04.2024 one Inspector of Police, CM's Special Vigilance Cell, Assam has filed an FIR before the Officer-in-Charge, CM's Special Vigilance Cell, Assam, inter alia, alleging that on the basis of a complaint received from one Partha Gogoi to the effect that the present petitioner has been collecting money from the Government employees by falsely intimidating them and by this process, he has accrued huge properties in Guwahati and Bihar and owns 8 Nos. of vehicles and one motorcycle. He also purchased landed properties and vehicles and inquiry was initiated and during the inquiry, it was found that the petitioner has accumulated disproportionate assets and the percentage of disproportionate assets with reference to his income was found to be 174.89% for the period 2012-2020.

The learned counsel for the petitioner has submitted that the petitioner has already been dismissed from service on 21.09.2021 while he was posted at 1st APTF Bn. Dakurbhita, Goalpara. However, after filing of the FIR, he is apprehending his arrested in connection with CM's Vigilance P.S. Case No. 04/2024. The learned counsel has also submitted that the petitioner has received notice for search of his house from the Investigating Officer on 16.04.2024 and accordingly, his wife allowed to remain present and the search was accordingly conducted in his house situated at Rajadwar, North Guwahati

and his rented house at Bhangagarh, Guwahati and several articles were seized therefrom including the ornaments of his wife. The learned counsel has also submitted that the petitioner had earlier cooperated in the regular inquiry, on the basis of which, the present FIR has been lodged. It is submitted by the learned counsel for the petitioner that he has disclosed all his statements of assets and liabilities during regular inquiry. He is also ready to cooperate with the Investigating Officer. It is further submitted that presently, the petitioner being dismissed from service, is not in a position of power and therefore, he is not in a position to influence the investigation in any manner. It is also submitted by the learned counsel for the petitioner that the case against the petitioner has been registered only for the offence of possessing properties disproportionate to his own source of income in the period from 2012-2020. It is submitted by the learned counsel for the petitioner that in a case of disproportionate assets, most of the evidence is in the nature of documentary evidence and as the period of which the case has been lodged, relates to the period of 2012-2020, there is no possibility tempering with the evidence which has already been collected by the Investigating Authority. More so, as present FIR was lodged on the basis of regular inquiry during which all the relevant documents were collected. In support of his submission, the learned counsel for the petitioner cited a ruling of the Hon'ble Apex Court of India in the case of State of **Chhatishgarh Vs. Gurjinder Pal Singh**, reported in **(2022) 0 Supreme (SC) 1527**.

On the other hand, Mr. M. Pukhan, learned Public Prosecutor has vehemently opposed the grant of anticipatory bail to the present petitioner on the ground that though the petitioner has been dismissed from service way back in the year 2021, however, he is holding the position of power and he may have

links with other higher official of Police Department and therefore, there is possibility that he is influencing the investigation. It is also submitted by the learned Public Prosecutor that during the course of inquiry also, the petitioner was summoned on several occasions, however, he never turned up and cooperated in the inquiry. It is also submitted by the learned Public Prosecutor that the present petitioner is a habitual offender and other cases are also pending against him namely Kokrajar P.S. Case No. 132/2018 and Kokrajar P.S. Case No. 224/2018. It is also submitted by the learned Public Prosecutor that during search of his residence also, the petitioner did not cooperate and had sent his wife Saraswati Choudhury at his residence, Rajadwar and even his wife also denied about the knowledge of whereabouts of present petitioner. It is submitted by the learned Public Prosecutor that the custodial detention of the petitioner is necessary to prevent destruction and tempering of evidence and hence, the prayer for anticipatory bail may be rejected.

I have considered the submissions made by the learned counsel for both sides and have gone through the case diary of CM's Vigilance P.S. Case No. 04/2024. There is no dispute at the bar present as the petitioner is not in service. He has already been dismissed from service on 21.09.2021. It also appears on perusal of the FIR that the check period for which the present petitioner is suspected to have a mass wealth beyond disproportionate to his own source of income from 01.04.2012 to 31.08.2020. It also appears that on 18.04.2024 at the time of assessment and valuation of the properties of the present petitioner by an empanelled government registered valuers. Though the present petitioner was not available and he had sent his wife Saraswati Choudhury to remain present during the said assessment procedure which indicates that he had cooperated in the investigation. Moreover, in a case of

disproportionate assets, the evidence which involved, is mainly documentary evidence and the period during which the offence of possessing disproportionate assets is lodged, is much earlier i.e. from 2012-2020. There is very likelihood that the petitioner, who has already been dismissed from service, would be able to temper with the evidence, which has already been collected during regular inquiry.

For aforesaid reasons, this Court is of the considered opinion that if the petitioner cooperates in the investigation and makes himself available for interrogation before the Investigating Officer as and when required, his custodial detention may not be necessary for fair progress of the investigation of CM's Vigilance P.S. Case No. 04/2024. Therefore, for the reasons mentioned above, the petitioner is hereby directed to appear before the Investigating Officer of CM's Vigilance P.S. Case No. 04/2024 within a week from the date of this order and cooperate in the investigation. If he does so within stipulated period of time, in the event of his arrest in connection with CM's Vigilance P.S. Case No. 04/2024, he shall be allowed to go on interim bail of Rs.50,000/- with one surety subject of the conditions that :-

- (i) The petitioner shall surrender his Passport to the Investigating Officer of the aforesaid case.
- (ii) The petitioner shall not leave the jurisdiction of State of Assam without prior leave from the Investigating Officer.
- (iii) The petitioner shall not directly or indirectly make any inducement or threat to any person who may be acquainted with the facts of this case.

Any violation of the conditions imposed may be good grounds for rejection of the anticipatory bail granted to the present petitioner.

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

Send back the case diary.

JUDGE

Comparing Assistant