

GAHC010122892024



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

Case No. : Bail Appln./1771/2024

ANUP OJAH
S/O- LATE HASMOT OJAH,
R/O- GANDHIBASTI MASJID ROAD,
P.O AND P.S- CHANDMARI,
DIST- KAMRUP (M), ASSAM, PIN-781003,
GUWAHATI.

VERSUS

THE STATE OF ASSAM
REP BY THE PP ASSAM

Advocate for the Petitioner : MS. PURABI DEKA

Advocate for the Respondent : PP. ASSAM

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 27.06.2024

Heard Ms. N. S. Thakuria, learned counsel for the accused petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State

respondent.

This is an application under Section 439 of Cr.PC, 1973 seeking regular bail to the petitioner, i.e, Shri Anup Ojah, who surrendered on 21.05.2024 in connection with Crime Branch Case No. 03/2024 registered under Sections 120(B)/420/468/471/409 of IPC.

The case of the prosecution is that an FIR has been lodged by one Shri Hirendra Nath Sharma on 28.01.2024 alleging inter alia that his father purchased a plot of land measuring 1 katha, 10 lechas covered by Dag No. 1129 and patta No. 1424 of Ulubari Mouza vide registration Sale Deed No. 2142 dated 31.08.1950 out of total land measuring 2 bigha, 2 katha and 8 lechas from one late Hari Kanta Barman.

It is the specific case of the prosecution that this land was never sold by the said owner and he expired on 15.01.2000.

It is the further case of the prosecution that the accused/petitioner alongwith his brother, one Jakir Ojah occupied the said plot of land on 09.01.2009 and later on, the informant came to know about it from his neighbours. Accordingly, a case has been registered.

Ms. N.S Thakuria, learned counsel for the accused petitioner submits that the allegations levelled by the informant pertains to a civil dispute between the parties, which has been adjudicated by a competent Civil Court within jurisdiction and the same is pending adjudication before this Court in RFA No. 60/2015. She further submits that when the title of a land in question is itself clouded and in dispute, no act of criminality can be said to have been

committed by the accused petitioner.

Mr. P. Borthakur, learned Additional Public Prosecutor on the other hand strongly opposes the prayer for bail.

He submits that the offence is serious and there are sufficient materials collected by the Investigating Officer against the accused petitioner showing the involvement of the accused petitioner in the offence alleged and since the investigation is not complete, the accused petitioner may not be released on bail.

I have heard the submissions made at the bar and have perused the materials available on record.

It appears that the accused petitioner has been languishing in jail since last 38 days. It further appears that the accused petitioner was last interrogated on in the month of May, 2024 and since thereafter, he has not been interrogated.

It further appears from the materials available in the Case Diary that the investigation has substantially progressed. It further appears that there is nothing adverse with regard to the antecedent of the petitioner and as regards fleeing from justice.

Undoubtedly, the offence is grave. However, the object of the bail is not punishment but to secure the appearance of the petitioner during his trial by reasonable amount of bail.

Considering the totality of the facts and circumstances of the case alongwith the length of detention, this Court is of the considered view that further detention of the petitioner may not be justified for the on-going investigation.

Accordingly, it is provided that the accused petitioner named above shall be released on bail on furnishing bail bond of Rs. 50,000/- with one surety of like amount to the satisfaction of the learned CJM, Kamrup (M) under the conditions that:

- (i) That the accused petitioner shall cooperate with the Investigating Officer as and when required;
- (ii) That the petitioner shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any Police Officer; and
- (iii) That the petitioner shall refrain from committing any similar offences in future of which he is accused or suspected of commission.

The bail application stands disposed of.

JUDGE

Comparing Assistant