

GAHC010127262024



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

Case No. : AB/1641/2024

K.R. NAGAPPAN
S/O KARUPPAN, F402 CASA GRANDE
R/O ESWARAN STREET, OMR,
KARAPAKKAM, BEHING GRT JEWELS,
KARAPAKKAM, KANCHEEPURAM, TAMIL NADU-600097, PH. 7358205222

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. B D KONWAR SR. ADV.

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 26-07-2024

Heard Mr. B.D. Konwar, learned Senior Counsel for the petitioner Sri K.R. Nagappan, who has filed this application under Section 438 of the Code of Criminal Procedure, 1973 (CrPC for short) with prayer for pre-arrest bail as he is

apprehending arrest in connection CID Police Station Case No. 05/2024 under Sections 120B/255/257/260/406/418/419/420/465/467/468/471 of the Indian Penal Code, 1860 (IPC for short).

2. Heard Mr. Vikas Gupta, learned counsel for the informant and Mr. B.B. Gogoi, learned Additional Public Prosecutor for the respondent State.

3. The FIR unfolds that the complaint Sri Deepak Tyagi, Secretary of M/S Sushila Gramodyog Sansthan has alleged fraudulent activities by Mr. Partha Bhardwaj and other accused named in the FIR. He has been cheated to the tune of Rs.6.11 Crores by the accused conjointly. The accused Mr. R.B. Thakur along with Mr. Rajesh Bansal approached the complainant regarding several projects of the Government of Assam posing as Consultants. Mr. V. Srinivasulu was introduced to the complainant and he was assured that work orders can be obtained from the Matak Autonomous Council and other departments.

4. The accused R.B. Thakur emphasized his contacts with the Government of Assam, suggesting that he could facilitate contracts for the firm M/S Sushila Gramodyog Sansthan. Then, R.B. Thakur, Rajesh Bansal, who is closely associated with Mr. V. Srinivasulu, requested the complainant to provide the relevant documents for empanelment of the complainant's firm with the Matak Autonomous Council for contracts and supplies. After the aforesaid registration of the complainant's company, a meeting was arranged with the authority of the Matak Autonomous Council (the Council for short), Dibrugarh. On 28.01.2023, the informant met Rajesh Bhansal and Mr. V. Srinivasulu at the office of the Council and was introduced to the present petitioner. The informant was duped that the petitioner and Mr. V. Srinivasulu are liaising agents for procurement and facilitation of purchased orders of the Council.

5. Thereafter, on 30.01.2023, a meeting was scheduled with the concerned officer of the Council and Mr. Partha Bhardwaj was introduced to the informant and a discussion was held for procurement of mass-order of motor pumps, blankets, mosquito nets, school bags, solar panel and other products by the Council and Mr. Partha Bhardwaj assured him that mass procurement of such items can be made without floating tenders. The prime accused Mr. Partha Bhardwaj had a nameplate as OSD in his office room of the Council to defraud the prospective suppliers.

6. Stating that Mr. Bhardwaj had an office at Guwahati also, the informant was invited to his office on 01.02.2023 for further course of action. Mr. Bhardwaj also informed him that the security deposit equivalent to 5% of the order amount was required to be paid in cash. The respondent No. 2, petitioner along with the other accused met Mr. Bhardwaj on 01.02.2023 in his office at Ajanta Path, Survey, Beltola, Guwahati and the informant/respondent No. 2 was asserted that Mr. Bhardwaj had the authority to procure goods amounting to Rs.2000 Crores annually from eligible suppliers without the necessity of floating tenders. The respondent No. 2/informant was also apprised that unutilized fund of Rs.500 Crores has to be utilized by the Council before the sanction elapses. Mr. Bhardwaj also assured the informant that he would process order in favour of the Sushila Gramodyog Sansthan but 5% of the order amount had to be paid in cash.

7. On 13.02.2023, M/S Sushila Gramodyog Sansthan received three work orders via courier for various supplies for a total amount of Rs. 93,68,00,000/- (Rupees Ninety Three Crores Sixty Eight Lacs). The work orders specifically mentioned that all the payment would be realized within 45 (Forty Five) days after supply of the order. As the informant had to pay 5% of cash security

deposit before the commencement of the supply of the order, on 12.03.2023, the informant paid Rs. 1,00,00,000/- (Rupees One Crore) to Mr. Rajesh Bansal and Mr. R.B. Thakur in cash at Highway Towers A-13/2, 3 & 4, Sector-62A, Noida towards the security deposit in presence of the Accountant of M/S Sushila Gramodyog Sansthan i.e. Mr. Deepesh Joshi. Thereafter, the complainant supplied goods to the Council and the relevant documents, invoices, Eway Bills and billty etc. reflects goods amounting to Rs.3,10,28,000/- (Rupees Three Crore Ten Lacs Twenty Eight Thousand) were supplied from 14th March, 2023 up-to 31st March, 2023.

8. It is further alleged that the accused led by Mr. Partha Bhardwaj continued to raise demand for the remaining security deposits from the informant. The informant requested for time to arrange cash withdrawals from his account.

9. On 19.04.2023, Mr. Partha Bharadwaj, his wife Mrs. Sadipta, the present petitioner and the other accused visited the informant's house and he handed over cash of Rs.1,25,00,000/- (Rupees One Crore Twenty Five Lacs) to Mr. Partha Bhardwaj, his wife Ms. Sadipta in presence of Mr. Anand Kumar Srivastava, an employee of M/S Sushila Gramodyog Sansthan. However, Mr. Partha Bhardwaj pointed out that this amount was not the actual due amount as work orders of Rs.93,68,00,000/- (Rupees Ninety Three Crore Sixty Eight Lacs) was placed and 5% of the amount was much higher than the amount paid by the informant.

10. On their persistence, on 24.04.2023 cash amount of Rs.1,50,00,000/- (Rupees One Crore Fifty Lacs) was handed over to the present petitioner and Mr. V. Srinivasulu during their meeting with the informant held at Nehru Place, New Delhi at the office of the National Federation of Farmers Procurement,

Processing and retailing Cooperatives of India Limited, in presence of the driver of the informant, Sri Sanjay Kashya. It is alleged that the informant supplied materials of Rs.3,10,28,000/- (Rupees Three Crores Ten Lacs and Twenty Eight Thousand) and he approached the petitioner and Mr. Partha Bhardwaj to initiate payment of the supplied materials from the month of May, 2023 as per the terms and conditions for payment within 45 (Forty Five) days and he was assured that the payment would be prioritized.

11. Following persistent telephonic calls, the informant received a payment of Rs.27,44,000/- (Rupees Twenty Seven Lacs Forty Four Thousand) from the Council through bank transaction. Additionally on 23.08.2023, an amount of Rs.46,80,000/- (Forty Six Lacs Eighty Thousand) was also received from the Council through bank transaction. A total amount of Rs.3.75 Crores in cash was received by the accused in the name of security deposit and another amount of Rs.2.36 Crores has to be paid to the informant. It is submitted that the informant has been cheated and has incurred loss to the tune of Rs.6.11 Crores by the petitioner in collusion with the other accused named in the FIR.

12. Several requests have been made by the informant and Mr. Partha Bhardwaj has assured that the payment would be made to the petitioner but no payment has been made so far which impelled the informant to lodge this FIR against the petitioner.

13. The learned counsel for the informant has submitted that the petitioner is a history sheeter and he is booked in connection with the similar offence not only in this case but there are instances of other cases of similar nature which have been registered against him. Ironically, in another Case booked as Hatigaon Police Station Case No. 05/2024 under Section 120(B)/406/420 of the IPC, the petitioner was granted interim bail vide order dated 22.03.2024 passed

by the learned Additional Sessions Judge No. 2, Kamrup(M) and later, this interim bail was made absolute.

14. It is submitted that the petitioner has procured bail orders by posing as the victim whilst on the contrary he is hand in glove with the prime accused. Collusively with the other accused, the petitioner has lodged a case against the prime accused to project himself as the victim. The question that falls for consideration is why after 5 (Five) years of association with Mr. Partha Bhardwaj, the petitioner who was allegedly duped by Mr. Partha Bhardwaj in June, 2022, took so long to lodge an FIR in March, 2024. Why was the petitioner sleeping over his own rights? This clearly depicts that the petitioner is complicit.

15. It is further submitted that despite the submissions of the learned Senior Counsel for the petitioner that the petitioner has appeared before the Investigating Officer and has cooperated with the investigation, this Court has every right to cancel the bail petition as the petitioner is not entitled to bail because investigation will be adversely affected if the petitioner is admitted to bail. The provisions of Section 438 of the CrPC cannot be exercised in an untrammelled manner especially in the cases in the nature of economic offences. This is a case where funds have been embezzled allegedly by the Council in the garb of procuring school bags and other essential articles depriving the beneficiaries from receiving the same.

16. The learned counsel for the informant has relied on the decision of Hon'ble the Supreme Court in *Srikant Upadhyay & Ors. Vs. State of Bihar & Anr.* in connection with Special Leave Petition (Crl.) No. 7940 of 2023 wherein vide order dated 14.03.2024, the Hon'ble Supreme Court has observed that:

“24. We have already held that the power to grant anticipatory bail is an extraordinary power. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion by the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead to miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass an interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases. At any rate, when warrant of arrest or proclamation is issued, the applicant is not entitled to invoke the extraordinary power. Certainly, this will not deprive the power of the Court to grant pre-arrest bail in extreme, exceptional cases in the interest of justice. But then, person(s) continuously, defying orders and keep absconding is not entitled to such grant.”

17. Appellant Srikant Upadhyay had continuously disobeyed the orders of the Trial Court. He failed to appear before the Trial Court after receipt of the summons and after issuance of the bailable warrants.

18. The instant case is not similar to the case of Srikant Upadhyay (supra).

19. It is further submitted by the learned counsel on behalf of the informant that the petitioner has fraudulently given a false address. In reply to his submission, the learned counsel for the petitioner has submitted that the address shown by the petitioner in the petition is similar to the address in the FIR.

20. The learned Additional Public Prosecutor has submitted that there are incriminating materials in the Case Diary against the petitioner and the Investigating Officer has opposed the bail petition and has forwarded an objection relating to the prayer of interim bail.

21. I have scrutinized the Case Diary. There are indeed incriminating materials in the Case Diary against the petitioner. The informant has been allegedly duped by the petitioner in connivance with the other accused as well as with the prime accused. However, the petitioner has appeared before the Investigating Officer and has cooperated with the investigation. His statement has already been recorded. The petitioner has not violated any bail conditions. I have considered the submission that the petitioner is willing to abide by any stringent bail conditions if imposed upon him.

22. Considering all aspects and in view of my foregoing discussions, the interim order dated 26.06.2024 is hereby made absolute under the conditions that:

(i) The petitioner shall appear before the Investigating Officer on every fortnight till completion of the investigation.

(ii) The petitioner shall cooperate with the remaining part of the investigation and refrain from interpolation of any documents and shall not tamper with the evidence.

(iii) The petitioner shall refrain from such activities with which he is alleged.

23. On breach of any of the bail conditions, the bail order shall stand automatically cancelled and the jurisdictional Court is at liberty to cancel the bail granted to the petitioner.

24. In terms of the above observations, this Anticipatory Bail Application stands disposed of.

25. Send back the Case Diary.

JUDGE

Comparing Assistant