

GAHC010148582024



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

Case No. : AB/1937/2024

TAPASH CHOUDHURY
S/O LATE JYOTISH CHOUDHURY
R/O VIDYA MANDIR
HOUSE NO. 15
BIKASH NAGAR,
BHETAPARA, P.S. BASISTHA, GUWAHATI-29
DIST. KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. A K BHATTACHARYYA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

29.07.2024

Heard Mr. A. K. Bhattacharyya, learned Senior counsel assisted by Mr. S. C. Biswas, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

2. This application, filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023, praying for grant of pre-arrest bail to the accused/petitioner, in connection with Basistha P.S. Case No. 410/2024, under Sections 120(B)/ 420/ 468/ 406/ 409 of the Indian Penal Code, 1860, corresponding to G. R. Case No. 3316/2024.

3. The Case Diary called for, in connection with Bail Application No.1980/2024 has been received and I have perused the same.

4. It is submitted by the learned Senior Counsel for the petitioner, Mr. Bhattacharyya that the present petitioner was earlier granted with interim pre-arrest bail by the learned Additional Sessions Judge (FTC) No. 3, Kamrup (M), Guwahati vide its order dated 08.07.2024, wherein, he was directed to appear before the investigating officer (IO) within 10 days from the date of the order passed and to co-operate with the IO in further investigation of the case. Pursuant to the said order, the petitioner visited the police station on three occasions to co-operate with the IO. However, due to the absence of the IO or the officer-in-charge of the Police Station, he was unable to give his statement as directed by this Court. He is not at fault, as he regularly visited the police station but could not meet the IO, resulting which his statement was not

recorded. In this regard, he has also submitted photographs showing his visits to the police station on three occasions to cooperate with the IO. Furthermore, he filed an additional affidavit before the learned Trial Court regarding this matter. However, on 19.07.2024, the learned Trial Court rejected his plea to extend the interim pre-arrest bail, despite him presenting all the materials before the court. His bail request was denied based on the materials available in the Case Diary, without granting him an opportunity to appear before the IO and co-operate in the investigation of the case.

5. He further submitted that the main culprits who were involved in the fraud case are already been arrested on 18.06.2024 and they are behind the bar. Therefore, he submits that the petitioner is in no way connected to the alleged offence and has been falsely implicated in the present case. The alleged forged sale deed was neither prepared nor issued by the petitioner, and he was unaware of any forged deed or document. Thus, he submits that the petitioner may be given one more opportunity to appear before the IO to record his statement and to co-operate the investigation of the case.

6. In this regard, Mr. Borthakur, learned Additional Public Prosecutor, has submitted that the accused/petitioner is the kingpin of the entire case, and the crime was committed at his initiative. It is alleged that during the investigation, the defendant, Agarwalla's family, in a Title Suit No.332/2007 had stated that they never sold their land to Mr. Nagen Rongson, who was the plaintiff No.2 in the said case, and obtained a decree in their favor in the said civil case. In the same time, Mr. Nagen Rongson also clarified that he never purchased any land from the said Agarwalla's family. However, after losing his Title Suit Case No.332/2007, the petitioner along with his two others associates approached

him, and gave assurance that they will help him to recover the land. They subsequently obtained documents from him under false assurance. They then allegedly prepared a forged sale deed (No. 3052/1989) in collusion with officials at the Sub Registrar's office.

7. Mr. Borthakur, learned Additional Public Prosecutor further submitted that during the investigation, it became evident that the accused/petitioner is the main perpetrator of the case, collaborating with associates to commit fraud and forge documents with the assistance of Sub Registrar officials. He also pointed out that the accused/petitioner is implicated in several other similar cases, namely Azara P.S. Case No. 261/2023, Fatasil Ambari P.S. Case No. 275/2023, and Gorchuk P.S. Case No. 325/2023. Thus, he vehemently objected in granting interim protection to the accused/petitioner at this stage.

8. Hearing the submissions made by the learned counsels for both sides and after perusal of the Case Diary along with the order passed by the Trial Court, it is evident that initially, the accused/petitioner was granted interim pre-arrest bail due to the IO's failure to present the Case Diary on multiple occasions. The petitioner was instructed to co-operate with the IO in the investigation. Although the petitioner visited the police station on three consecutive occasions, he was unable to meet the IO and thus could not record his statement. Subsequently, his anticipatory bail was not extended based on incriminating evidence found in the Case Diary, leading to the Trial Court's rejection order. Thus, the rejection cannot be deemed illegal, as it followed a thorough perusal of the Case Diary and after consideration of arguments from both sides.

9. Moreover, while the petitioner was granted interim pre-arrest bail, this alone cannot be decisive. Additionally, based on submissions from the learned Additional Public Prosecutor and the contents of the Case Diary, it appears the

petitioner was involved in the alleged offence and participated in fabricating a forged and fake sale deed with the malicious intention to acquire the land. Furthermore, it is noted he is implicated in three other similar cases. Thus, granting interim pre-arrest at the investigation stage may hinder the purpose of thorough investigation, as the IO might face difficulties in obtaining crucial information if the accused is protected by anticipatory bail.

10. In this connection, decision of the Apex Court passed in the case of ***P. Chidambaram vs. Directorate of Enforcement***, reported in ***(2019) 9 SCC 24*** can be stated wherein, on paragraph- 83 of the said judgment, it has been held that:

83. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent-Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail.”

10. So, considering all these aspects of the case and the view expressed by the Apex Court and considering the incriminating materials vis-à-vis the nature and gravity of the offence, I am of the view that this is not a fit case where the privilege of pre-arrest bail can be granted to the accused/petitioner at this stage and accordingly, the same stands rejected.

11. In terms of above, this anticipatory bail application stand disposed of.

JUDGE

Comparing Assistant