

GAHC010163862024



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

Case No. : Bail Appln./2436/2024

TOLARAM PAREEK @ ANIKET PAREEK
S/O PRAHLAD RAI PANDIYA, R/O VILL- PULASAR, P.O.-DERAJSAR, P.S.-
CHURU, DIST- CHURU, RAJASTHAN, PIN-331402

VERSUS

UNION OF INDIA
REPRESENTED BY SC, CBI

Advocate for the Petitioner : MR. S K SINGH, P BORUAH, MR D K MEDHI

Advocate for the Respondent : SC, CBI,

Linked Case : AB/1967/2024

RAKESH JANGID
S/O HANUMAN JANGID
FLAT NO. 3-C
MARUTI MINAR APARTMENT
NEAR HERITAGE HOTEL
MAZGAON

P.S. AND P.O. TEZPUR
DIST. SONITPUR
ASSAM
PIN-784001

VERSUS

UNION OF INDIA
REPRESENTED BY SC
CBI

Advocate for : MR. S K SINGH
Advocate for : SC
CBI appearing for UNION OF INDIA

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
ORDER

31.08.2024

Heard learned Senior Counsel, Mr S K Singh, for the petitioner, Sri Rakesh Jangid, who has filed an application under Section 482 of the BNSS, 2023, with prayer for pre-arrest bail as he is apprehending arrest in connection with CBI/ACB/GHY Case No. RC0172024A0003 of 2024, under Section 61(2) of BNS, 2023, read with Sections 7/7(a) of the PC Act, 1988 (as amended in 2018), which is registered as AB No. 1967/2024.

2. Heard learned Senior Counsel, Mr S K Singh, for the petitioner, Shri Tolaram Pareek @ Aniket Pareek, who has filed an application under Section 483 of the BNSS, 2023, with prayer for bail as he was arrested on 21.07.2024, in connection with the aforementioned CBI case, His bail application is registered as BA No. 2436/2024.

3. Heard Mr M Haloi, learned Special Public Prosecutor, CBI.

4. An FIR lodged by Sri Sudhir Chowdhury unfolds that Sri Rakesh Jangid,

Inspector of CGST, Tezpur, called Sri Sudhir Chowdhury over phone on 12.07.2024 and asked the informant to meet him in his office situated at Tezpur and Sri Rakesh Jangid compelled the informant to pay gratification of Rs. 5 lacs for smooth functioning of his business of hardware store. When he visited the office of Sri Rakesh Jangid on the afternoon of 12.07.2024, he was threatened by Rakesh and under duress, the informant was compelled to pay a gratification of Rs. 2 lacs as at that time he had only Rs. 2 lacs with him. It is further alleged that, thereafter Rakesh Jangid threatened the informant to pay the remaining amount by 20.07.2024, for smooth functioning of his hardware business. The informant was not willing to pay the gratification, but he was compelled to pay the same.

5. It is averred that a trap was laid and a team of CBI officials along with independent witnesses, in execution of the trap, added phenolphthalein powder and a solution to the currency notes, which were to be used for laying the trap. All the required memorandums and documents were prepared and on 21.07.2024, the entire team along with the witnesses proceeded to the place of occurrence. The trap was laid and the entire proceeding of the trap was recorded and the petitioner, Tolaram Pareek @ Aniket Pareek had accepted the gratification on behalf of the petitioner, Sri Rakesh Jangid, who accepted the undue advantage of Rs. 3 lacs over phone. This conversation was on loudspeaker and was also recorded. The petitioner, Tolaram Pareek @ Aniket Pareek was arrested in connection with this case and he was

forwarded to custody.

6. It is submitted on behalf of the petitioner, Sri Rakesh Jangid that the petitioner has a very good career and a good track record. He has been receiving 10 out of 10 points in his ACR for the last three years and the remarks on his ACR has been always “Very Good” for the last 9 to 10 years. On the contrary, the informant is a tax evader and when it has come to the notice of the petitioner, Sri Rakesh Jangid that the informant is a tax evader, a concocted case has been slammed against the petitioner.

7. It is further submitted on behalf of the petitioner, Sri Rakesh Jangid that the CBI has raided the petitioner’s permanent residence as well as the petitioner’s official residence and nothing has been recovered from the possession of the petitioner. Annexure-4 clearly reveals that after search and raid by the CBI, only cash of Rs. 19,000/- was recovered from the petitioner’s permanent residence and this was also handed over to the petitioner’s father, Sri Hanuman Jangid. Annexure-4 clearly reveals that no incriminating materials were recovered from the petitioner’s permanent residence, despite the fact that the search was conducted at odd hours, i.e., during the midnight of 22.07.2024. Annexure-5 also clearly reveals that no incriminating materials were recovered from the workplace of the petitioner, Rakesh Jangid, although search was conducted at odd hours. Annexure-6 also reveals that no incriminating materials were recovered from the official residence of the petitioner at Tezpur, despite the fact that the search was conducted from 07:30 pm to 11:45 pm.

8. It is further submitted that no call record could be linked between the petitioner, Rakesh Jangid and Tolaram Pareek @ Aniket Pareek. It is further submitted that the petitioner is not absconding. The petitioner was under treatment as he was suffering from severe backache.

9. The learned counsel for the petitioner has relied on the decision of Hon'ble the Supreme Court in *Gurbaksh Singh Sibbia etc. –vs- The State of Punjab*; reported in AIR 1980 SC 1632. It is submitted that a larger Bench of the Hon'ble Supreme Court has observed that-

“11. The Full Bench of the Punjab and Haryana High Court rejected the appellants' applications for bail after summarising, what according to it is the true legal position, thus:

(1) The power under Section 438, Criminal Procedure Code, is of an extra-ordinary character and must be exercised sparingly in exceptional cases only;

(2) Neither Section 438 nor any other provision of the Code authorises the grant of blanket anticipatory bail for offences not yet committed or with regard to accusations not so far levelled.

(3) The said power is not unguided or uncanalised but all the limitations imposed in the preceding Section 437, are implicit therein and must be read into Section 438.

(4) In addition to the limitations mentioned in Section 437, the petitioner must make out a special case for the exercise of the power to grant anticipatory bail.

(5) Where a legitimate case for the remand of the offender to the police custody under Section 167 (2) can be made out by the

investigating agency or a reasonable claim to secure incriminating material from information likely to be received from the offender under Section 27 of the Evidence Act can be made out, the power under Section 438 should not be exercised.

(6) The discretion under Section 438 cannot be exercised with regard to offences punishable with death or imprisonment for life unless the court at that very stage is satisfied that such a charge appears to be false or groundless.

(7) The larger interest of the public and State demand that in serious cases like economic offences involving blatant corruption at the higher rungs of the executive and political power, the discretion under Section 438 of the Code should not be exercised; and

(8) Mere general allegation of mala fides in the petition are inadequate. The court must be satisfied on materials before it that the allegations of mala fides are substantial and the accusation appears to be false and groundless.”

16. A close look at some of the rules in the eight-point code formulated by the High Court will show how difficult it is to apply them in practice. The seventh proposition says :

"The larger interest of the public and State demand that in serious cases like economic offences involving blatant corruption at the higher rungs of the executive and political power, the discretion under Section 438 of the Code should not be exercised.”

23. It remains only to consider the second proposition formulated by the High Court, which is the only one with which we are disposed to agree but we will say more about it a little later.

“36. We have said that there is one proposition formulated by the High Court with which we are inclined to agree. That is preposition No. (2). We agree that a 'blanket order' of anticipatory bail should not generally be passed. This flows from the very language of the section which, as discussed above, requires the applicant to show that he has "reason to believe" that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. That is why, normally, a direction should not issue under Section 438(1) to the effect that the applicant shall be released on bail "whenever arrested for whichever offence whatsoever." That is what is meant by a 'blanket order' of anticipatory bail, an order which serves as a blanket to cover or protect any and every kind of allegedly unlawful activity, in fact any eventuality, likely or unlikely regarding which, no concrete information can possibly be had. The rationale of a direction under Section 438(1) is the belief of the applicant founded on reasonable grounds that he may be arrested for a non-bailable offence. It is unrealistic to expect the applicant to draw up his application with the meticulousness of a pleading in a civil case and such is not requirement of the section. But specific events and facts must be disclosed by the applicant in order to enable the court to judge of the reasonableness of his belief, the existence of which is the sine qua non of the exercise of power conferred by the section.”

10. On the contrary, learned Special Public Prosecutor, CBI has relied on the decision of Hon'ble the Supreme Court in *P Chidambaram –vs- Directorate of Enforcement* reported in AIR 2019 SC 4198, wherein it has been held and observed that-

“67. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.

75. After referring to Siddharam Satlingappa Mhetre and other judgments and observing that anticipatory bail can be granted only in exceptional circumstances, in Jai Prakash Singh v. State of Bihar and another (2012) 4 SCC 379, the Supreme Court held as under:-

“19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty.”

76. Power under Section 438 Cr.P.C. being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain

(1998) 2 SCC 105, it was held that in economic offences, the accused is not entitled to anticipatory bail.”

11. The learned Special Public Prosecutor has submitted that the petitioner Rakesh Jangid has been evading investigation. The CBI even went to the hospital, but he was not found in the hospital. His house was searched, but he was not found in his house. If the medical documents marked as Annexure-9 series of the petition are true then why was he not found in the hospital when the CBI went searching for him in the hospital.

12. It is submitted that investigation would be adversely affected if both the petitioners, Rakesh Jangid and Shri Tolaram Pareek @ Aniket Pareek, are admitted to bail. If the informant was a tax evader then action ought to have been taken against him, but instead of taking action, the petitioner, Rakesh Jangid is evading arrest. The other petitioner, Shri Tolaram Pareek @ Aniket Pareek, has been trapped in an entrapment proceeding.

13. It is submitted by the learned Senior Counsel for the petitioners that the ratio of the decision of Hon’ble the Supreme Court ***P Chidambaram –vs- Directorate of Enforcement***’ reported in **AIR 2019 SC 4198**, is not applicable to the instant case, despite the fact that the learned Special Public Prosecutor has relied on the decision of Hon’ble the Supreme Court in ***P Chidambaram’s case (supra)***.

14. I have considered the submissions at the Bar with circumspection.

15. Indeed the facts and circumstances of each case have to be taken into consideration while considering the prayer for anticipatory bail. There is no straightjacket formula how prayer for anticipatory bail has to be considered.

16. I have also scrutinized the Case Diary.

17. There are incriminating materials in the Case Diary against both the petitioners. However, I have considered the length of detention of the petitioner, Shri Tolaram Pareek @ Aniket Pareek. The petitioner, Shri Tolaram Pareek @ Aniket Pareek, has been behind bars since 21.07.2024.

18. It appears that further custodial detention may not be required for the progress of investigation.

19. The petitioner, Tolaram Pareek @ Aniket Pareek is enlarged on bail of Rs 30,000/- (Rupees Thirty Thousand), with one suitable surety of the like amount to the satisfaction of the Special Judge, CBI, Assam, Additional Court No. 3, Guwahati, under the conditions that:

- (i) the petitioner shall cooperate with the remaining part of investigation,
- ii) the petitioner shall refrain from such activities with which they are alleged, and
- iii) the petitioner shall not leave the jurisdiction of the Court without prior permission.

20.1. On breach of any of the bail conditions, bail order shall automatically stand cancelled.

21. The submissions on behalf of the petitioner, Rakesh Jangid cannot be considered at this juncture. There are incriminating materials in the Case Diary against the petitioner. He is holding a responsible post and the allegations against him are grave.

22. It appears that investigation may be adversely affected if the petitioner is insulated by an order of anticipatory bail. The power under Section 482 of the BNSS, 2023 cannot be exercised in an untrammelled manner. In the light of Hon'ble the Supreme Court in *Gurbaksh Singh Sibbia's case (supra)* and *P Chidambaram's case (supra)*, it is held that the petitioner Rakesh Jangid is not entitled to bail, at this stage.

23. Considering all aspects and in view of my foregoing discussions, the application under Section 482 of the BNSS, 2023, AB No. 1967/2024, is rejected at this stage.

24. Send back the Case Diary.

JUDGE

Comparing Assistant