

GAHC010161132024



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

Case No. : AB/2125/2024

TAPASH CHOUDHURY
S/O LATE JYOTISH CHOUDHURY
R/O VIDYA MANDIR PATH, 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 P KATAKI, MS. A LALA, MRS R BEGUM

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 26.09.2024

Heard Mr. P. Kataki, learned counsel for the petitioner. Also heard Mr. K. K. Das, learned Additional Public Prosecutor for the State respondent.

2. This is an application filed under Section 482 of the Bharatiya Nagarik

Suraksha Sanhita, 2023, praying for granting 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 IPC in correspondence with G.R. Case No. 3316/2024 of IPC.

3. The Case Diary has been received and I have perused the same.

4. It is submitted by the learned Counsel for the petitioner, Mr. Kataki that this is the second/subsequent bail application for the petitioner after rejection of the earlier anticipatory bail application by this Court vide order dated 29.07.2024 passed in AB No. 1937/2024. But the present petition has been filed on the new ground that in the earlier bail application the status of the land/deed of sale etc were not brought before this Court. He further submitted that one title suit has been filed by the Shri. Jagirath Rongson and Shri. Nagen Rongson against one Agarwalla's family claiming their right title interest over the disputed land, wherein, they claim themselves to be the agriculturist and alleged that with a object to grab the land, Agarwalla's family/defendant of the said case tried to evict the Rongson's family and subsequently with the help of some anti social elements, forceful possession was taken over the land on the southern side. But after filing of the suit, the plaintiff/Rongson family remained absent and in the said case the defendant filed their counter claim which was accordingly decreed and the plaintiff suit was dismissed accordingly. Thus, said Jagirath Rongson and Mr. Nagen Rongson were the main culprit who tried to create a false/forged sale deed in the year 1989, when they themselves were in possession of the land, though, subsequently the elder brother of the plaintiffs created the deed of relinquishment and sold the land to the said Agarwalla's family. One

complaint was lodged by one Smti. Hiramoni Choudhury alleging that on the basis of one fraudulent deed in the name of Shri. Nagen Rongson, the present petitioner along with one Simanta Choudhury and other few associates conspired and sold a plot of land to Rudraskh Entrade Private Limited, care of Hiramoni Choudhury. On the basis of said complaint, G.D entry was made and after preliminary enquiry, the enquiry officer lodged an FIR against the present petitioner along with others. But from the title suit, it is seen that said Nagen Rongson is the main culprit who fraudulently created a sale deed and only due to grudge against the present petitioner and he dragged the present petitioner along with others in this case. Shri Nagen Rongson obtained the sale deed fraudulently in the year 1989, though, during that period they were the original owner and falsely created a sale deed showing the sale in his favour from the Agarwalla's family, though, the said Agarwalla's family was not in picture in the year 1989.

5. It is further submitted that after obtaining the interim pre-arrest bail granted by the learned Additional Sessions Judge (FTC) No. 3, Kamrup (M), Guwahati vide its order dated 08.07.2024, he appeared before the investigating officer (IO) in three occasions but intentionally his statement was not recorded by the IO and subsequently on the basis of the said report his interim pre-arrest bail was rejected. But, the petitioner was always ready and willing to appear before the IO and co-operate in the investigation of this case and to reveal/disclose the entire facts behind the case. He accordingly submitted that if the present petitioner is granted with the privilege of pre-arrest bail, he will extend his co-operation to the IO and will co-operate in the further investigation of the case.

6. On the other hand, Mr. Das, learned Additional Public Prosecutor has submitted that there are sufficient incriminating materials against the present accused/petitioner in the case diary and from the earlier rejection order also, it is seen that the accused/petitioner is a habitual offender and he is also implicated in 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, wherein, also same set of allegation i.e. the creation of fraudulent sale deed etc are brought against the present petitioner. He further submitted that there is no such new ground brought in the present petition for granting the privilege of pre-arrest bail which was earlier rejected by this Court on perusal of the case diary and considering the incriminating materials against the present petitioner. He further submitted that the IO also filed his bail objection, wherein, it is stated that during investigation it has come to the knowledge of the IO that the present petitioner along with one Simanta Choudhury and Habil Ahmed and their associates had managed the government official in making the forged sale deed. More so, it is stated that during the investigation and after custodial interrogation of the co-accused said Simantha Choudhury and Habil Ahmed, it is found that the Aadhaar card, PAN card of Mr. Nagen Rongson was provided to present petitioner Tapash Choudhury and hence, for recovery of those original documents/identity cards etc. Mr. Nagen Rongson, his custodial interrogation of the present petitioner is required for the interest of the investigation. He accordingly submits that from the bail objection of the IO as well as from the materials available in the case diary, it is seen that there are sufficient incriminating materials available against the present petitioner, who is the mastermind of the entire crime. Accordingly, he raised vehement objection in granting pre-arrest bail to the accused/petitioner. He further submitted that the

custodial interrogation of the accused/petitioner will be required to unearth some more facts involved in the case and also to book the other culprits for the purpose of investigation.

7. After hearing the submissions made by the learned counsels for both sides, I have perused the case record and the case diary. It is seen that his earlier bail application was rejected by this Court after perusal of the case diary and considering the incriminating materials against the accused/petitioner.

8. In the Order dated 29.07.2024, passed in AB Case No.1937/2024, it has been observed by this court in paragraph Nos. 9 and 10 as follows:-

"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."

9. However, the instant application for bail was filed on behalf of the petitioner on the ground that actual facts in regard to the dispute of the land was not brought before this Court earlier. Further, it is stated by the learned

counsel for the petitioner that said Nangen Rongsen is the main culprit who is behind the entire crime and present petitioner along with his associates were falsely implicated in this case. The earlier civil case was between the said Rongson and Agarwalla's family and after being defeated in the said civil suit he entered into the conspiracy, wherein, he involved the present petitioner without his any involvement in the alleged offence. But, on perusal of the case diary, it is seen that the present petitioner is the main perpetrator of the crime and in connivance with some of the official of the registered office they have created forged and false sale deed. More so, it is not the only case against the present petitioner as stated by the learned Additional Public Prosecutor and from the Case dairy, it reveals that the present petitioner along with others are also involved in similar kind of offences which are registered in three different police station. There may be civil dispute between the Rongsen and the Agarwalla family, but, for that ground only it cannot be held that the present petitioner is not involved in the alleged offence. Rather, from the report of the IO and the materials available in the case diary, it is seen that the petitioner is the kingpin of the entire case. As per the IO, some of the documents are yet to be recovered which is still in possession of the present petitioner which is required for the investigation of the case. More so, as per the IO, the deed No.3052/89 is yet to be collected and verify. More so, from the statement of the co-accused who already arrested in connection with this case, it is found that the present petitioner is the key person under whose active involvement the property in question was sold fraudulently. Further, as per the IO, there is every possibility to destroy and temper the evidences as well as hamper the investigation process, if the present accused petitioner is enlarge on pre-arrest bail at the crucial stage of investigation.

10. So, considering all these aspects of the case 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 wherein 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.

12. Sent back the case dairy.

JUDGE

Comparing Assistant