

GAHC010162742024



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

Case No. : Bail Appln./2555/2024

KANGKAN KASHYAP AND ANR
S/O LT PRADEEP KUMAR BORPUZARI PERMANENT R/O HOUSE NO. 183
TNS PATH NEHRU PARK ROAD JORHAT NEAR POLYTECNIC SCHOOL DIST.
JORHAT ASSAM PIN 785001 PRESENTLY RESIDING AT FLAT NO 982 ATS
GREENS VILLAGE SECTOR 93A NOIDA GAUTAM BUDDHA NAGAR UTTAR
PRADESH 201304

2: ANGKAN KASHYAP
JORHAT

2: ANGKAN KASHYAP
S/O LT PRADEEP KUMAR BORPUZARI R/O HOUSE NO 183 TNS PATH
NEHRU PARK ROAD JORHAT NEAR POLYTECHNIC SCHOOL DIST JORHAT
ASSAM PIN78500

VERSUS

THE CENTRAL BUREAU OF INVESTIGATION
REP BY SC CBI GUWAHATI

Advocate for the Petitioner : MR. A CHAUDHURY, MR. P K DAS, MR. N MAHAJAN, MR. D BORA

Advocate for the Respondent : SC, CBI,

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 17.09.2024

Heard Mr. B.K. Mahajan, learned counsel for the petitioners. Also heard Mr. M. Haloi, learned Standing counsel, CBI.

2. By this application filed under section 483 of the Bharatiya Nagarik Suraskha Sanhita, 2023, the accused petitioners namely, **Kangkan Kashyap and Angkan Kashap @ Angkan Borpuzari**, have prayed for bail in connection with **RC-0172024A0004 under Section 120(B) IPC, 61(2) of BNS, 2023, Section 7, 7A, 8, 9, 10, 12, 13(2) r/w Section 13(1) (a) of Prevention of Corruption Act, 1988 (as amended in 2018)**.

3. It has been submitted by the learned counsel for the petitioners that petitioner No. 1 is a bona fide businessman and the Director of M/s KXK Technologies Pvt. Ltd., while petitioner No. 2 is an employee of the aforesaid firm. It is also submitted that no incriminating material has been seized from the conscious possession of the petitioners. It is further submitted that no offence under Sections 7, 13(1)(a), and 13(2) of the Prevention of Corruption Act can be applied to the present petitioners, as they are not public servants within the meaning of Section 2(28) of the Act; therefore, these offences cannot be attributed to them.

4. According to the learned counsel for the petitioners, they have been arrested in connection with the instant case in a mechanical manner, without following the due process of law, and were never issued a notice under Section 35(3) of BNSS, corresponding to Section 41(A) Cr.P.C. Assuming, but not

admitting, that the allegations are true, any offence that could be made out against the petitioners would, at best, fall under Sections 7A, 8, 9, 10, or 12 of the P.C. Act. The petitioners are not connected with the main offence under Sections 7, 13(1)(a), and 13(2) of the P.C. Act, and by not issuing a notice under Section 41(A) Cr.P.C., the investigating agency has violated the directions set forth by the Hon'ble Supreme Court in *Satendra Kumar Antil v. Central Bureau of Investigation and Anr.*, reported in 2022 SCC OnLine SC 825. It is further submitted that Petitioner No. 1 is suffering from hypertension and high cholesterol and is currently undergoing constant medication. The petitioners have been detained in custody for last 52 days since their arrest on 26.07.2024. The offence as alleged against the petitioners, the mandatory period of detention is 60 days. Considering the nature of offence as well as length of detention, the petitioners may be enlarged on bail.

In support of his submission, the learned counsel for the petitioners has placed reliance on the following case laws-

- (i) *N. Vijaykumar v. State of Tamil Nadu*, reported in (2021) 3 SCC 687.
- (ii) *P. Chidambaram v. Central Bureau of Investigation*, reported in (2020) 13 SCC 337.
- (iii) *Manish Sisodia v. Directorate of Enforcement*, reported in 2024 SCC OnLine SC 1920.
- (iv) *State of U.P. v. Amarmani Tripathi*, reported in (2005) 8 SCC 21.

5. Mr. Haloi, learned Standing counsel, CBI, has produced the case diary and

submits that the petitioners are indeed involved in the alleged offence and there is sufficient incriminating materials found in the case diary against the petitioners. The investigation is still in progress. Considering the nature of the offence, the petitioners may not be enlarged on bail at this stage.

6. I have considered the submissions made by the learned counsel for the parties. I have also perused the case diary.

7. It is to be noted that the petitioners have been languishing in judicial custody for last 52 days, presuming that substantial part of investigation has been completed. Under such backdrop, this Court is inclined to grant bail to the petitioners.

8. Accordingly, the petitioners, named above, shall be released on bail in connection with **RC-0172024A0004 under Section 120(B) of IPC, 61(2) of BNS, 2023, Section 7, 7A, 8, 9, 10, 12, 13(2) r/w Section 13(1) (a) of Prevention of Corruption Act, 1988 (as amended in 2018)**, on furnishing bail bond of **Rs.1,00,000/-** each with one suitable surety each of the like amount to the satisfaction of learned Special Judge, CBI, Assam.

9. The direction for bail is further subject to the conditions that the petitioners:

(a) shall not leaves the territorial jurisdiction of learned Special Judge, CBI, Assam without prior written permission from him/her;

(b) 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;

(c) shall not hamper with the investigation, or tamper with the evidence of the case.

10. In the view of the above, the bail application stands disposed of.

11. Send back the case diary.

JUDGE

Comparing Assistant