

GAHC010184592024



2024:GAU-AS:9067

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

Case No. : AB/2396/2024

RAMJAN ALI
S/O LATE HAIFIZUDDIN
VILL- BHAKATGAON
P.S. RAHA
DIST. NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR M H AHMED, MR N ZAMAN, I AMIN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

10.09.2024

Heard Mr. M.H. Ahmed, learned counsel for the petitioner and Mr. K.K. Das, learned Additional Public Prosecutor for the respondent State.

2. By this application under Section 482 of the Bharatiya Nagarik Suraksha Sanhita 2023

['BNSS'], the petitioner viz. Ramjan Ali has approached this Court seeking the benefit of pre-arrest bail, apprehending his arrest, in connection with Gorchuk Police Station Case no. 80/2024 registered under Sections 461/380, Indian Penal Code [IPC], for the second occasion after rejection of his earlier pre-arrest bail application, A.B. no. 1876/2024 by an Order dated 05.08.2024, after hearing the learned counsel for the petitioner and the learned Additional Public Prosecutor as well as upon perusal of the materials in the case diary, collected during the course of investigation carried out till then and which were available in the case diary on that date.

3. Before consideration of the instant application, it may be relevant to extract the relevant excerpts of the previous order dated 05.08.2024.

3. The First Information Report [FIR] was lodged on behalf of M/s Ronak Enterprise. As per the FIR lodged on 13.03.2024, M/s Ronak Enterprise has a godown which is located at Pub Boragaon, Gorchuk, Guwahati. As an incident of theft took place on 13.03.2024 in the said godown, on being checked, [i] E-rickshaw Batteries; [ii] E-rickshaw Chargers; and [iii] Erickshaw Parts; were found stolen from the godown. At around 07-00 a.m. on 13.03.2024, staff of Ms. Ronak Enterprise discovered that the godown had been forcibly entered into by breaking its lock. The CCTV installed at the godown premises was found in broken condition and the DVR box was found stolen.

4. Mr. Sharma, learned counsel for the petitioner has submitted that the petitioner is a businessman who runs a hardware shop at Village - Bhakatgaon, Police Station - Raha and he has obtained a licence from the jurisdictional Monipurtup Gaon Panchayat to run his business. He has submitted that the petitioner had purchased few of the items which were, later on, found allegedly stolen from the godown, mentioned in the FIR. Mr. Sharma has further submitted that a co-accused, Emran Alom who was suspected to be involved in the theft case, has already been extended the benefit of pre-arrest bail by an Order dated 31.05.2024 passed in AB no. 1406/2024.

5. Ms. Das, learned Additional Public Prosecutor who has received the case diary, has submitted on the basis of the materials collected during the

course of the investigation carried out so far, available in the case diary, that the petitioner is found to be involved in the act of theft as a number of articles stolen from the godown of M/s Ronak Enterprise were recovered from the house of the petitioner.

6. I have considered the submissions of the learned counsel for the parties and have also perused the materials on record including the materials available in the case diary.

7. It has emerged from the Search & Seizure List, M.R. no. 67/2024 that on search of the house of the petitioner on 20.03.2024, a number of articles namely, [i] East Man Mitra Leed Acid 3 W Charge - 1 no.; [ii] East Man Battery EM16024ER - 1 no.; [iii] East Man Battery EM150ER - 1 no.; [iv] East Man Battery EM135012 ER - 10 nos.; [v] East Man Battery EM120 ER - 28 nos.; and [vi] East Man Battery EM1006ER - 2 nos.; were recovered in presence of witnesses and those seized articles were identified by the representative of M/s Ronak Enterprise as some of the articles, found stolen from the godown at Pub Boragaon, Gorchuk, Guwahati on 13.03.2024.

8. The submissions of Mr. Sharma, learned counsel for the petitioner that the case of the petitioner should be considered vis-à-vis the benefit extended to a co-accused, Eman Alom on parity is considered and upon consideration, the same is found not acceptable on the ground that the co-accused, Eman Alom was extended the benefit of pre-arrest bail as no stolen articles were found to be in custody and possession of the said co-accused. On the other hand, a number of articles, found stolen from the godown of M/s Ronak Enterprise, have been recovered from the house of the present petitioner. As such, the case of the petitioner is not found similarly situated as like the co-accused, Eman Alom and as such, the contention that the petitioner can also be extended the benefit of pre-arrest bail under Section 438, CrPC on parity is not found maintainable.

9. A number of stolen articles have been recovered from the custody and possession of the petitioner and the articles stone are of such description and brand that one cannot purchase those without a valid receipt and without paying receipt. The petitioner has not been able to place any valid receipt

against his alleged purchase.

10. Having considered the materials available in the case diary as well as in the records of the case, in its entirety, this Court finds that the case in hand is not fit one where the privilege of pre-arrest bail under Section 438, CrPC can be extended to the petitioner as the petitioner is found prima facie involved in the act of theft in the godown of M/s Ronak Enterprise on 13.03.2024. Accordingly, the present application on being found devoid of merits, stands rejected.

4. Mr. Ahmed, learned counsel for the petitioner has referred to a nos. of orders like Order dated 31.05.2024 passed in A.B. no. 1406/2024 [Emran Alom vs. the State of Assam]; Order dated 22.04.2024 passed in A.B. no. 810/2024 [Parama Deka vs. the State of Assam]; order dated 03.05.2024 passed in B.A. no. 1060/2024 [Mafizuddin Ahmed vs. the State of Assam]; and few other orders passed in bail applications in respect of other accused persons implicated in connection with Gorchuk Police Station Case no. 80/2024, to contend that as those applications were allowed, the instant application be also considered in similar manner.

5. It is settled that after rejection of an application for pre-arrest bail under Section 438, CrPC, there is scope to file a subsequent bail application for pre-arrest bail only if there is a change in the fact situation or in law which requires earlier view being interfered with or where the earlier finding has become obsolete.

6. The grounds cited by the learned counsel for the petitioner behind preferring the instant application is that the investigation of the case must have progressed considerably and the matter of pre-arrest bail in such situation, would require re-consideration. The ground for rejection of the earlier pre-arrest bail application in case of the petitioner has already been recorded in paragraph 7 of the previous order dated 05.08.2024 passed in A.B. no. 1876/2024. The reason as to why the principle of parity is not applicable in the case of the petitioner vis-à-vis the co-accused person named Emran Alom, is also recorded in paragraph 8 of the order dated 05.08.2024. The same reasoning is also applicable at this stage qua the petitioner and the other co-accused persons, who have been granted the privilege of pre-

arrest bail finding insufficient incriminating materials requiring their custodial interrogation.

7. In the above view of the matter, the instant application is found not merited to have any re-consideration as a significant amount of stolen items was recovered from the house of the petitioner indicating involvement of the petitioner in the crime. Accordingly, the instant bail application is rejected.

JUDGE

Comparing Assistant