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

Case No. : Bail Appln./2940/2024

ABHIJIT GOGOI AND ANR
S/O LATE RAM GOGOI, R/O PHUKAN NAGAR, P.S. AND DIST-SIVASAGAR,
ASSAM

2: JITAMONI GOGOI
W/O SRI ABHIJIT GOGOI
R/O PHUKAN NAGAR
P.S. AND DIST-SIVASAGAR
ASSA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. P K GOGOI, DR. B N GOGOI, MR J P KACHARI

Advocate for the Respondent : PP, ASSAM, SC, CBI

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

21-11-2024

Heard Mr. B. N. Gogoi, learned counsel for the petitioners and Mr. M. Haloi, learned Special Public Prosecutor, CBI.

2. By this application filed under Section 483 BNSS, 2023, the petitioners, namely, (1)

Abhijit Gogoi, son of late Ram Gogoi, and (2) **Smti. Jitamoni Gogoi**, wife of Abhijit Gogoi; both resident of Phukan Nagar, Police Station-Sivasagar, District-Sivasagar are seeking bail in **Sivasagar Police Station Case No. 113/2024** under Section 316(2)/318(1) BNS, 2023, read with Section 21(1)/21(2)/21(3) of the Banning of Unregulated Deposit Schemes Act, 2019, corresponding to G.R. No. 200/2024 in which they are in custody since 03.09.2024.

3. As per the FIR of the case dated 03.09.2024 lodged before the Officer-in-Charge of Sivasagar Police Station by one of its Sub-Inspector of Police, the allegation is that one company, by the name of Lakhimi Thrift and Credit Co-operative Society is engaged in the collection of money from customers through its agents opening Savings and Recurring Accounts, Deposit Accounts etc., with the promise of payment of high rate of interest on the amounts deposited by the depositors. During preliminary enquiry, it was found that the said company is not registered under RBI and SEBI and is operating in violation of the guidelines laid down for the functioning of NBFC's (Non-Banking Financial Company) by the Regulatory Authority. The said company promised a high rate of interest to its customers thereby luring them to invest their hard earned money, whereas, the investors are unaware as to where their money has been invested. There is a high risk that the money invested by such investors with the said company will be siphoned off through fraudulent means, where the customers have no recovery or protection in case of default. This is in clear indication that the said company is operating with the ulterior motive to dupe the customers by promising them high rate of return on their investments. By the said FIR, the authority of Sivasagar police was requested to take necessary legal action against the Directors/Managers/Owners of the said Lakhimi Thrift and Credit Co-operative Society.

4. Said FIR of the concerned SI of Sivasagar Police Station was accordingly registered as Sivasagar P. S. Case No. 113/2024 under Section 316(2)/318(1) BNS, 2023, read with Section 21(1)/21(2)/21(3) of the Banning of Unregulated Deposit Schemes Act, 2019, corresponding to G.R. No. 200/2024.

5. The petitioner Nos. 1 and 2 are husband and wife. The petitioner No.1 is the Secretary of the said Co-operative Society, whereas, the petitioner No. 2 is its Treasurer. Petitioners stated that their said Society has been duly registered under the Assistant Registrar of Co-operative Society, Sivasagar.

6. According to the petitioners various local public as customers had opened their Savings and Fixed Deposit Accounts, Loan Accounts with the said Society and that the transaction of the society have been running smoothly on a day to day basis without any fraudulent manner with the local public customers. Further, the customers holding fixed deposit accounts in the Society whose such accounts were matured their maturity amounts have also been paid back on regular basis without any fraudulent manner. According to the petitioners none of the local public customers of the said co-operative Society made any complaint against the said Society or against the petitioners. But surprisingly, said Sivasagar Police Station Case No. 113/2024 was registered against them and they were arrested in which they are in custody since 03.09.2024.

7. It is also stated on behalf of the petitioners that the Society involved in the case is a Co-operative Society duly registered under the Assam Co-operative Societies Act and Rules. As such, the offences alleged in said Sivasagar P.S. Case No. 113/2024 are not at all attracted against them. Moreover, according to the petitioners, the ingredients of those Sections are also not involved in the alleged offences.

8. Dr. Gogoi, learned counsel for the petitioners placed the Bye-Laws of one Sivasagar District Central Thrift and Credit Co-operative Society Limited, Head Office-Jorhat, Assam and placed its provisions that it can take money and provide loan to its members being a cooperative society.

9. Dr. Gogoi, also placed the provisions of Sections 10 and 11 of the Assam Co-operative Societies Act, 2007 stating that the said Lakhimi Thrift and Credit Co-operative Society has been duly registered under the said 2007 Act. Therefore, Dr. Gogoi submitted that neither the Sections 316(2)/318(1) of the BNS, 2023, nor the Sections 21(1)/21(2)/21(3) of the Banning of Unregulated Deposit Schemes Act, 2019 will be applicable to the petitioners being the Secretary and Treasurer respectively of the said registered Co-operative Society. Dr. Gogoi also relied on a decision of this Court dated 27.05.2011 passed in WP(C) No. 2713/2011.

10. Dr. Gogoi therefore submitted that the petitioners should be considered for their bail in said Sivasagar P.S. Case No. 113/2024 since police has no role to detained them in custody under Section 316(2)/318(1) BNS, 2023, read with Section 21(1)/21(2)/21(3) of the Banning

of Unregulated Deposit Schemes Act, 2019. If police during investigation finds any illegality in operating the said registered Society by the petitioners at best they can bring it to the notice of the Registrar of Co-operative Societies for any such illegal act committed by the said Society and it is only the Registrar of Co-operative Societies of Assam who can initiate appropriate action against the petitioners on committing any illegal act in the name of the said society to its customers/members etc.

11. On the other hand, Mr. Haloi, learned Special PP, CBI placing the provisions of Sections 63, 70 and 72 of the Assam Co-operative Societies Act, 2007 submitted that the Society involved in the case manned by the petitioners in violations of those provisions of the Act involved themselves in huge financial transactions by taking money for their personal gain in the name of the Society and further, allegedly granting loan without obtaining any special sanction of the Registrar of the Co-operative Societies, Assam thereby, involved in a huge financial scam.

12. From the case diary, Mr. Haloi, learned Special PP, CBI placed the data as well as audit report of the said Lakhimi Thrift and Credit Co-operative Society for the years 2020-21, 2021-22, 2022-23 and 2023-24 made by the Senior Inspector and Auditor of Co-operative Societies, Sivasagar that indicates huge amount of economic offence of collecting money, granting loans and investments in the name of the said Society where the beneficiaries are the petitioners.

13. Mr. Haloi also placed Section 180 statements of the acquainted witnesses of the case and placed that how the petitioners got the illegal benefit in the name of the said Society from different people by collecting money from the depositors/creditors, granting loans in the name of the said Society showing that statement of the Bank Accounts of both the petitioners showing them to be the beneficiaries of such deposits/loans.

14. Relying on the decision of the Hon'ble Supreme Court in the case of *Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation*, reported in (2013) 7 SCC 439, Mr Haloi, Special PP, CBI submitted that as the matter relates to economic offence involving huge amounts for which the State suffered enormous financial loss, the petitioners should not be released on bail and adequate time should be given to the CBI to investigate the matter pertaining to the

illegal investments made by the petitioners from the money illegally collected in the name of concerned Society by them and the other accused persons of the case by cheating the depositors/investors etc., making false promises to them where the petitioners managed all the Books of Accounts of such money illegally collected that are involved in the case.

15. Perused the case diary and the materials so far collected during investigation of the case as been placed by the CBI before the Court. It is seen that vary recently the Government of Assam handed over the said Sivasagar P.S. Case No. 113/2024 for its investigation by the CBI. The investigation of the case by the CBI is still under process. From the case diary it is also seen that though the Society involved in the case was opened long back, it has been registered only on 05.03.2021 under the said 2007 Act.

16. Finding sufficient incriminating materials in the case diary regarding involvement of the petitioners in the alleged crime, this Court is of the view that it is not a fit case to grant bail to the petitioners in the case at this stage, though they are in custody since 05.09.2024.

17. Accordingly, this bail application of the petitioners, namely, 1) **Abhijit Gogoi**, son of late Ram Gogoi, and (2) **Smti. Jitamoni Gogoi**, wife of Abhijit Gogoi; in CBI SHG RC No. 0172024E0028 arising out of said Sivasagar P.S. Case No. 113/2024, corresponding to G.R. No. 200/2024, stands rejected at this stage.

18. Return the case diary here with to the concerned Special Public Prosecutor of CBI.

JUDGE

Comparing Assistant