GAHC010201852024

2024:GAU-AS:12225

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

Case No. : Bail Appln./2963/2024

JYOTISMAN SARMA
S/O UDAY SARMA
R/O VILL- CHENIALPARA
P.S.-KALAIGAON
DIST- UDALGURI BTAD
ASSAM
PIN-784146

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

Advocate for : MR. J KALITA
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

03/12/2024

Heard Mr. J Kalita, learned counsel for the petitioner. Also heard Mr. K K Parashar, learned Additional Public Prosecutor, Assam and Mr. M Haloi, learned Special Public Prosecutor for the CBI, respondent Nos. 1 and 2 respectively.

2. This application under Section 483 of BNSS, 2023 has been filed by the petitioner, namely, **Jyotisman Sarma,** son of Uday Sarma, resident of Village-Chenialpara, Police Station-Kalaigaon, District-Udalguri, BTAD, seeking bail in Mushalpur P.S. Case No. 102/2024 under Sections 318(2)/316(2) of BNS read with Section 21(2)/21(3) of the Banning of Unregulated Deposit Schemes Act, corresponding to G.R. No. 760/2024, in which he was arrested on 13.09.2024 and is in custody since then.

3. As per the FIR of the case dated 08.09.2024 lodged by the complainant, one Smti. Mainao Brahma, wife of Phanin Swargiary of Village-Bengnabari, Police Station-Mushalpur, Baksa borrowed an amount of Rs.14,00,000/- from him by executing an agreement for a year stating that on her failure to return the same within one year, she shall pay 5% in Rs.100/- per month. For that purpose vide Cheque Nos. 729712 and 729713 each amounting to Rs.7,00,000/-, in total Rs.14,00,000/- was paid to her on 17.03.2023. But she failed to return his due capital as well as interest. On 07.08.2024, said Smti. Mainao Brahma gave him a cheque of Rs.10,00,000/- and on the same day he opened a new account at HDFC Bank, Barama Branch and deposited those two cheques with the Manager of the said HDFC Bank, Barama Branch. On checking the account of Smti. Mainao Brahma, said Manager of the HDFC Bank told him that there is no money in the account of Smti. Mainao Brahma and two days thereafter on 09.08.2024, the Branch Manager of the Barama Branch of HDFC Bank formally informed him about the insufficient fund of the account No. 9992008888888 of said Smti. Mainao Brahma and the cheque given by her were returned to him with the return memo indicating insufficient fund. As Smti. Mainao Brahma cheated the complainant misappropriating his due capital and interest to escape to an unknown place having no response in her mobile number 9101669459, the complainant requested the Officer-in-Charge of Mushalpur Police Station to investigate the matter and to take appropriate action, requesting the said authority to recover his money. Accordingly, Mushalpur P.S. Case No. 102/2024 under Section 318(2)/316(2) of BNS read with Section 21(2)/21(3) of the Banning of Unregulated Deposit Schemes (BUDS) Act was registered.

4. During investigation of the case, the petitioner along with Sumit Barman, son of Maheswar Barman were arrested and produced before the learned Sessions Judge, Baksa on 14.09.2024.

5. Mr. Kalita, learned counsel for the petitioner submitted that after the investigation was taken over by the CBI just before completion of statutory detention of 60 days, it filed an application before the learned Special Judge for adding of Section 316(2)/318(2) of the BNS Act, 2023 and the learned Special Judge by order dated 08.11.2024 invoked the provisions of Sections 316(5)/61(2) of BNS, 2023 in said Mushalpur P.S. Case No. 102/2024 which was re-registered as CBI ACB Guwahati Case No. RC0172024E0007 after it took over the investigation from the State of Assam.

6. Mr. Kalita, learned counsel for the petitioner submitted that from the reading of the FIR of the case, it can be well seen that there is no ingredients of Sections 61(2), 316(2), 316(5) and 318(2) of the BNS, 2023. Moreover, the petitioner is no way connected with the case and he has been illegally kept in custody since 13.09.2024.

7. By filing a written objection by the CBI objecting bail of the petitioner in the case, Mr. Haloi, submitted that the petitioner conspired with the co-accused, Smti. Mainao Brahma, Sri Dipankar Bhatta and Sri Sumit Barman, where the arrested co-accused Smti. Mainao Brahma took deposits from the complainant on the pretext that he will be given 5-7% interest every month without having any authority of banking transaction. The present petitioner was arrested in the case because of his involvement as one of the conspirator in depositing the money given to Smti. Mainao Brahma by the complainant and others, in depositing/investing such amount in the trading using such amount of the depositors and investors for their personal gain, thereby cheating the depositors/investors causing criminal breach of trust.

8. It is placed before the Court by Mr. Haloi that the petitioner was an employee of the ICICI Bank, Mushalpur Branch where he met the co-accused Smti Mainao Brahma, Sri Dipankar Bhatta and Sumit Barman and having the banking knowledge they all together hatch the conspiracy to cheat the people with fake promise of high return, where said Dipankar Bhatta and Sumit Barman were also working in the ICICI Bank, Mushalpur Branch. Furthermore, husband of the accused Smti. Mainao Brahma was also working in the same branch of ICICI as peon.

9. From the case records placed before the Court, Mr. Haloi, submitted and shown how the petitioner with the other co-accused, namely, Smti Mainao Brahma, Sri Dipankar Bhatta and Sumit Barman conspired and played active role with dishonest intention in managing the fraudulent scheme

and routed the depositors/investors money through their personal accounts and/or through the accounts of their nearest relatives and others that caused immense financial loss to innocent investors/depositors/ individuals.

10. Mr. Haloi, learned Special Public Prosecutor, CBI from the case record also placed that the petitioner has been arrested on the basis of oral and documentary evidence collected during investigation like his bank account statement and bank account statements of the other co-accused persons of the case. As such, Mr. Haloi for the CBI objected the bail of the petitioner.

11. Perused the case records placed before the Court by Mr. M Haloi, learned Special Public Prosecutor, CBI. It is seen that the State Government has handed over the investigation of said Mushalpur P.S. Case No. 102/2024 to the CBI on 09.10.2024 and the Government of India gave its consent of such proposal of the State of Assam on 11.10.2024. From the case records placed by the CBI, it is seen that on scrutiny of bank account statements of the arrested accused persons of the case including the petitioner that there are multiple transactions have been made by those accused persons to the account of D B Stock as well as the bank account of one Gunajit Bhatta brother of Dipankar Bhatta; in the bank account of Smti. Sunati Goyari, friend of Dipankar Bhatta; in the bank account of Smti. Mainao Brahma and also in the bank account of Sumit Barman.

12. During the short period of investigation from 11.10.2024 onwards the CBI could recover various relevant information as to how the petitioner and his associates siphoned off huge amount of money given to Smti. Mainao Brahma by the depositors/investors for their personal gain.

13. Case record also reveals that neither the petitioner nor his other associates namely, Smti Mainao Brahma, Sri Dipankar Bhatta, Sumit Barman and Gunajit Bhatta are registered as SEBI as Collective Investment Management Company under the SEBI (Collective Investment Schemes) Regulation, 1999 nor filed any offer documents with SEBI to raise funds from public through issue of securities. Petitioner and his other associates named above are also not registered with SEBI as any intermediate.

14. Case record of the CBI also reveals that the petitioner and his said associates namely, Smti Mainao Brahma, Sri Dipankar Bhatta, Sumit Barman and Gunajit Bhatta are also not registered with the Reserve Bank of India thereby not entitled to take deposit of money from the public.

15. Considering sufficient incriminating materials in the case record of the CBI pertaining to the involvement of the petitioner in the alleged crime, as noted above, the Court is of the view that the

petitioner, **Jyotisman Sarma** is not entitled for his bail in said Mushalpur P.S. Case No. 102/2024 considering his detention since 13.09.2024.

16. Accordingly, this bail application of the petitioner, named above, in said Mushalpur P.S. Case No. 102/2024 stands rejected.

JUDGE

Comparing Assistant