

GAHC010203142024



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

Case No. : Bail Appln./2975/2024

AMLAN BORAH @ SUMAN
S/O ARUN KR. BORAH, R/O HOUSE NO 21, GHORAMARA, NIRIBILI PATH,
SUBWAY ANANADA PATH, P.S.-BASISTHA, DIST- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. SURAJIT DAS, SAMIM RAHMAN, MR SARFRAZ NAWAZ

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

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 07.11.2024

Heard Mr. S. Nawaz, learned counsel for the petitioner as well as Mr. M. Haloi, learned Standing Counsel, CBI.

2. By filing this petition under Section 483 of Bharatiya Nagarik Surakshya Sanhita, 2023 the accused-petitioner, namely, **Amlan Borah @ Suman** has prayed for grant of bail in connection with **Dibrugarh P.S. Case**

No.352/2024 under Sections 316 (2)/318(4)/61(2)/238 of BNS r/w Section 21 (1)/21(2)/21(3)/23 of Banning of Unregulated Deposit Schemes Act, 2019.

3. The learned counsel for the petitioner submits that the petitioner is no way connected with the alleged offence. The brother of the accused petitioner namely, Tapan Bora and his wife Sumi Bora were arrested by police for allegedly being involved with Bishal Phukan in the commission of the alleged offences. It is further submitted that he was working as a consultant for the company Percelia Pharmaceutical Private Ltd. At the relevant point of time, the accused petitioner was out of town for some work. Later, he discovered that a notice under Section 35 (3) of BNSS, 2023 has been issued against him. Subsequently, on his returning to his residence on 12.09.2024, the accused petitioner visited the CID office and accordingly, he was arrested.

4. It is further submitted that the petitioner is completely unaware of the financial fraud allegedly perpetrated by the prime accused Bishal Phukan. The learned counsel also contended that the accused petitioner has been languishing in judicial custody for last 57 days. He has been interrogated several times by the police and he has co-operated with the investigation. As such, his further custodial detention is not necessary for the purpose of investigation. Accordingly, learned counsel prays to release the accused petitioner on bail.

5. In response, learned Standing Counsel, CBI has submitted that the investigation has revealed that Bishal Phukan in collusion with other co-accused person including the petitioner operated an unregulated deposit scheme solicited enrolment and induced innocent depositors to deposit funds by making misleading forecasts and suppressing material facts. The investors either deposited their hard earned money into the personal account of Bishal Phukan or into the account of Percelia Consultancy at his instance. The petitioner

maintained detailed record of approximately 1700 investors including their amounts invested.

6. It is also the submission of learned CBI counsel that the petitioner was employed as Supervisor at Percelia Consultancy. This indicates that the petitioner had actively assisted Bishal Phukan in running such unregulated deposit scheme. It is further submitted that on filing a petition before the CBI Court, Section 409 IPC was added in the case wherein the mandatory period is 90 days. Investigation is still progressing as such, at this stage, the release of the accused petitioner may hamper further investigation of the case. Hence, learned CBI counsel prays for dismissal of the bail application.

7. Having heard the learned counsel for the parties, the admitted fact is that the petitioner has completed 57 days in custody. Initially the case was registered under Section 316 (2)/318(4)/61(2)/238 of BNS r/w Section 21/23 of Banning of Unregulated Deposit Schemes Act wherein the mandatory period is 60 days.

8. On that count, learned counsel for the petitioner submits that the provision of IPC has already been repealed since 01.07.2024. Hence, prayer for adding section 409 IPC cannot be taken into consideration on repealing Act.

9. It is also not in dispute that the provision of IPC has been repealed since 01.07.2024. The CBI had filed a petition before the CBI court with a prayer for adding Section 409 IPC after repealing of the Act which was allowed by the CBI court accordingly.

10. Hon'ble Supreme Court in the case of ***Pernod Ricard India (P) Ltd vs. State of Madhya Pradesh and others*** reported in 2024 live law (SC) 321,

has held that a repealed provision will cease to operate from the date of repeal and the substituted provision will commence to operate from the date of its substitution subject to specific statutory prescriptions.

11. Section 6 of General Clauses Act, 1897 deals with effect of repeal which is reproduced as follows –

*“**Effect of repeal.**—Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—*

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.”

11. In view of the above, the petitioner named above shall be released on bail on furnishing bail bond of **Rs. 50,000/-** with two suitable sureties of like amount to the satisfaction of the learned Special Judge, CBI, Guwahati subject to the following conditions:

- (i) The petitioner shall not leave the territorial jurisdiction of learned **Special Judge, CBI, Guwahati** without prior written permission from him/her;
- (ii) That the petitioner shall cooperate with the Investigating Officer as and when required;
- (iii) That the petitioner 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 Police Officer or the Court.

Violation of any condition shall tantamount to cancellation of bail.

This disposes of the bail application.

JUDGE

Comparing Assistant