

GAHC010203762024



2024:GAU-AS:11790

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

Case No. : Bail Appln./2989/2024

ANIRAM BASUMATARY AND ANR
S/O DWIPEN BASUMATARY, R/O VILL- GOHPUR MILANNAGAR, P.S.-
GOHPUR, DIST- BISWANATH CHARIALI, ASSAM

2: MITHINGA NARZARY
S/O MOTIRAM NARZARY
R/O VILL- GOHPUR MILANNAGAR
P.S.-GOHPUR
DIST- BISWANATH CHARIALI
ASSA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR R DHAR, J DAS, MRS. A BASUMATARY, MR B C
MUCHAHARY

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

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 28.11.2024

Heard Mr. R. Dhar, learned counsel for the petitioners. Also heard Mr. M. Haloi, learned Special Public Prosecutor, CBI for the respondent.

2. In pursuant to order dated 18.11.2024, the CBI has been made as respondent No. 2 in the instant case.

3. This is an application under Section 483 of BNSS, 2023 praying for grant of bail to the accused petitioners, who have been arrested in connection with Cyber PS CID Case No. 12/2024, under Sections 111(2)(b)/316(2)/316(5)/318(4) of BNS *read with* Section 66 I.T. Act.

4. Case Diary has been received. Perused the same. Heard both sides.

5. Mr. Dhar, learned counsel for the petitioners, submitted that the present accused/petitioner No. 1 is an Ex-NDFB Cadre and after coming over ground, he started business and apart from that, he also has agricultural land and other landed property. The accused/petitioner No. 2 is an Assistant Teacher and he is posted in Sonapur, Bodo Higher Secondary School, Gohopur. Both the accused/petitioners were arrested in connection with this case on 08.09.2024 and since then, they are languishing in jail *hajot*. They were arrested in connection with this case on the basis of F.I.R. lodged by one Inspector Rakesh

Kalita of CID Cyber Police Station, dated 09.08.2024, alleging *inter alia* that the trading website in the name of "ybyfundss.com" is widely used by the people of Assam and all over India as a trading website. Though the name of the present accused/petitioners were not mentioned in the F.I.R., but they were arrested in connection with this case on 08.09.2024 itself and forwarded before the Court of learned SDJM-II, Guwahati and after their police remand, they were again produced before the learned Court below on 12.09.2024 and since then, they are in custody. The learned counsel for the petitioners, accordingly, submitted that both the accused/petitioners are not the manager or the creator of the said online trading business, but it is a fact that both the accused/petitioners also invested their money in the said YBY fund app and they were only the user of the said trading app. It is also a fact that the petitioners become greedy having found easy earning process and accordingly, they have invested money in the said YBY fund ranging from Rs. 10,000/- to Rs. 50,000/- and after couple of month, 20% were also credited to their bank account from the total invested money.

6. Mr. Dhar further submitted that the petitioners are not the administrators/members and the creators of the website, namely, "ybyfundss.com", and they are also the victim of the circumstances as considerable amount of the petitioners are also siphoned off by the administrative member and the creator of the said YBY Fund App. He further submitted that both the accused/petitioners are in custody for last 82 days and no effort has been made by the Investigating Agency to nab the other culprits/accused persons and all the relevant documents and bank accounts etc. are already been seized by the I.O. and hence, further custodial interrogation of

the present accused/ petitioners are not at all required. He further submitted that Section 316(5) of BNS is also not at all attracted against the present petitioners as there is no evidence that they made any conspiracy in that regard. Both the accused/petitioners are the permanent residents of their addressed locality and they will produce the genuine bailor before the Court and there is no chance of absconding. Rather they will extend their full co-operation in the further investigation of this case.

7. Mr. Dhar further relied on a decision of Hon'ble Supreme Court passed in the case of **P. Chidambaram Vs. Directorate of Enforcement**, reported vide **2019 0 Supreme(SC) 1317 [Criminal Appeal No. 1831 of 2019, arising out of S.L.P.(Criminal) No. 10493 of 2019 (Decided on 04.12.2019)]** and mainly emphasized on paragraph Nos. 20 & 21 of the judgment, wherein the Hon'ble Apex Court has expressed the view that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provides irrespective of nature and gravity of the charge, the precedent of another case alone will not be the basis for either grant or refusal of bail. Paragraph Nos. 20 & 21 of the said judgment reads as under:

20. The learned senior counsel for the appellant has also placed reliance on the decision on the decision in the case of [Sanjay Chandra vs. CBI](#), (2012) 1 SCC 40 with specific reference to paragraph 39 which reads as hereunder:

" Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds: the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons

tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration."

The said case was a case of financial irregularities and in the said circumstance this Court in addition to taking note of the deep-rooted planning in causing huge financial loss, the scope of consideration relating to bail has been taken into consideration in the background of the term of sentence being seven years if convicted and in that regard it has been held that in determining the grant or otherwise of bail, the seriousness of the charge and severity of the punishment should be taken into consideration.

21. *Thus from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provides so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But*

ultimately the consideration will have to be on case to case basis on the facts involved therein and securing the presence of the accused to stand trial."

8. Mr. Dhar, learned counsel for the petitioners, also relied on another decision of Hon'ble Calcutta High Court and basically emphasized on paragraph Nos. 22 & 23 of the said judgment, wherein the Hon'ble Calcutta High Court, relying on the decisions of the Hon'ble Supreme Court, has held that the principle of bail is a rule and refusal is an exception and neither the State or prosecuting agency nor the Court has no wherewithal to provide or protect the fundamental right of an accused to have speedy trial as enshrined under Article 21 of the Constitution of India.

9. Accordingly, Mr. Dhar submitted that it is a fit case wherein the bail can be granted to the present accused/petitioners considering the length of detention undergone by the accused/petitioners.

10. Mr. Haloi, learned Special Public Prosecutor, CBI submitted in this regard that it is an exceptional case where the principle is jail is rule and bail is exception. More so, he submitted that the economic offences are considered to be a class apart. In the instant case also, it is seen that the accused/petitioners introduced themselves as the manager of the said YBY trading website and induced the people to invest money their money and thereby misappropriated huge amount of money. More so, huge amount of money has been transferred to their personal accounts and during investigation, it is seen that the accused had the banking transaction worth Rs. 1,16,95,372.25/- with scores of multiple depositors through UPI/IMPS etc. w.e.f. 01.02.2024 to 11.09.2024. From the statement of the bank accounts of the accused persons, it also reveals that they

are receiving money from several accounts and most of those transactions are done through UPI and IMPS and further details are still awaited by the Investigating Agency and thus, the CBI needs further time for thorough investigation of this case and to book the every culprits who are also involved in this case and to unearth some other fact of the case.

11. Mr. Haloi further submitted that in the F.I.R. of Cyber P.S. CID Case No. 12/2024, dated 09.08.2024, the Sections 21(1), 21(2), 21(3) and 23 of the Banning of Unregulated Deposit Schemes Act, 2019 have been invoked during investigation of the case and hence, those have also been added in this re-registered F.I.R. Therefore, cognizable case was registered vide Cyber PS CID F.I.R. No. 12/2024, under Sections 111(2)(b), 316(2), 316(5), 318(4) of the BNS and Section 66 of the IT Act and Sections 21(1), 21(2), 21(3) and 23 of the Banning of Unregulated Deposit Schemes Act, 2019.

12. Mr. Haloi further submitted that admittedly the accused/petitioners are behind the bar for last 82 days, but the CBI is still investigating the case as some of the co-accused/other culprits are yet to be nabbed in connection with this case and there are some materials which are yet to be collected by the CBI and hence, he submitted that some more time may be required for completion of the investigation.

13. In this context, Mr. Haloi further cited a decision of the Hon'ble Supreme Court passed in the case of **Y.S. Jagan Mohan Reddy Vs. C.B.I., decided on 09.05.2013**, wherein the prayer for further investigation of the CBI was allowed rejecting the prayer for bail. He basically emphasized on paragraph Nos.

15, 16 & 17 of the said judgment, which reads as under:

"15) Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

16) While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.

17) Taking note of all these facts and the huge magnitude of the case and also the request of the CBI asking for further time for completion of the investigation in filing the charge sheet(s), without expressing any opinion on the merits, we are of the opinion that the release of the appellant at this stage may hamper the investigation. However, we direct the CBI to complete the investigation and file the charge sheet(s) within a period of 4 months from today. Thereafter, as observed in the earlier order dated 05.10.2012, the appellant is free to renew his prayer for bail before the trial Court and if any such petition is filed, the trial Court is free to consider the prayer for bail independently on its own merits without being influenced by dismissal of the present appeal."

14. After hearing the entire submissions made by the learned counsels for both sides, I have also perused the Case Diary and it is seen that admittedly both the accused/petitioners are behind the bar for last 82 days. Further, on careful perusal of the Case Diary, it is also seen that there is sufficient progress in the investigation of this case. In the same time, it is also seen from the materials available in the Case Diary that there are huge amount of banking transactions in the accounts of both the accused/petitioners. It is also a fact that

the present case is also comes under the economic offence which should be considered as an offence class apart. The judgment of **Y.S. Jagan Mohan Reddy** (supra), as relied by the learned Special Public Prosecutor, was passed in a certain circumstances of the case wherein the prayer was made by the CBI for extending the time of the investigation which was accordingly considered and the direction was given to the accused to renew his prayer for bail before the Trial Court giving liberty to the accused to approach before the learned Trial Court with a petition for bail.

15. In the instant case, it is seen that the CBI made a prayer for dismissal of the petition enabling the CBI to thoroughly investigate the case. More so, from the materials available in the Case Diary, it is seen that releasing the accused petitioners on bail at this stage may hamper or tamper the further investigation of this case as the case is still at the stage of investigation and some of the co-accused persons are yet to be nabbed in connection with this case. Accordingly, considering the gravity of the offence and other aspects of the case, the bail petition of the present accused/petitioners is hereby rejected at this stage. However considering the period of detention already undergone by the accused/petitioners, the CBI is hereby directed to expedite the investigation.

16. The bail application stands disposed of in terms above.

JUDGE

Comparing Assistant