

GAHC010207722023



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

Case No. : AB/3171/2023

ANOWAR HOSSAIN @ ANOWAR HUSSAIN
S/O ABDUL KHALEK
R/O VILL- TANG VITA,
P.O. MAJERCHAR,
DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. S K DAS

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 19.02.2024

Heard Mr. S. K. Das, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent No. 1 and Mr. S. Islam, learned counsel appearing on behalf of the informant.

2. This is an application under Section 438 of the Code of Criminal Procedure, 1973 praying for grant of pre-arrest bail to the accused/petitioner, who is apprehending arrest in connection with Dhubri P.S. Case No. 329/2023, under Sections 120(B)/420/ 468/471/467 of the Indian Penal Code.

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

4. It is submitted by Mr. Das, learned counsel for the petitioner, that the present petitioner is the elected Chairman of Geramari Samabai Samity and he belongs to a reputed family and has no any criminal antecedents. He is innocent and no way involved in the alleged offence. Some false and concocted allegations are brought against him in the F.I.R. The share of the informant was transferred to his son as per Assam Co-operative Societies Act, 2007 and his share in Sl. No. 2460 was accordingly transferred in the name of his son, namely, Abdul Karim Sk. Such transfer is also permissible under Sections 52, 53, 54 & 55 of the Assam Co-operative Societies Act, 2007. The share No. 2460 was given to one Abdul Karim Sk., son of Jalaj Uddin, the informant herein, whereas

the accused No. 3 has the share in Sl. No. 2468, i.e. Abdul Karim Sk., son of one Jamal Uddin. But the informant with *mala fide* intention has misled the investigating agency only to harass the accused persons. The petitioner, under the supervision of Assistant Registrar of Co-operative Societies, Dhubri, used to produce the comprehensive updated/corrected list of shareholders/voters of the petitioner's society, which is published and supervised by the officer of the Department. Before publishing the notice, the objections are also invited and the last notice was issued on 11.04.2022 and 21.01.2022, but the informant never approaches before the Board/Samiti with any objection in replacing him from share No. 2460. The present petitioner, being the Chairman of Geramari Samabay Samity, has no involvement in the alleged offence and there was no *mala fide* intention to replace the name of the informant with his son. Further it is submitted that the petitioner has already appeared before the I.O. after obtaining the interim pre-arrest bail, vide order dated 15.09.2023, and cooperating the investigating agency in further investigation. He is still ready and willing to cooperate with the I.O. in the further investigation of this case if he is granted with the privilege of interim pre-arrest bail. He further submitted that the District Deputy Registrar of Co-operative Society, Dhubri has also made communication with the District Commissioner, Dhubri and accordingly the BOD was also directed to take appropriate genuine steps to provide rights to petitioner, Jalal Uddin (informant of this case), who is alive and claiming share No. 2460 as his share, if Abdul Karim Sk failed to prove the identification of his father Jalal Uddin within stipulated time as fixed by the BOD. Thus, the share of the informant is still under consideration and hence, there cannot be any question of misappropriation of the share of the informant.

5. Mr. P. Borthakur, learned Additional Public Prosecutor, has submitted in this regard that there are sufficient incriminating materials collected by the I.O. against the present accused/ petitioner and considering the nature of allegation brought in the F.I.R., the custodial interrogation of the present accused/ petitioner, who was discharging his duty as the Secretary to the Geramari Samabai Samity, will be required for the interest of just and proper investigation of the case. Further he submitted that the I.O. has also filed a written objection stating that the petitioner is not cooperating with the I.O. and all the relevant documents, which are still in the custody of the concerned officer, is not produced though Section 91 Cr.P.C. notice was issued by the I.O.

6. Mr. S. Islam, learned counsel appearing on behalf of the informant, by filing a written objection, also submitted that the informant has no son named Abdul Karim Sk, rather he has a son of 11 years and 5 months, namely, Md. Hakim Uddin. Further, the informant never filed any application for deleting or changing his name as a shareholder/voter of Geramari Co-operative Society and he never put any signature or thumb impression on any application filed before the Co-operative Society to include the name of his son by deleting his name as a shareholder. But the present accused/petitioner, along with other co-accused persons with *mala fide* intention had declared the informant as a dead person and changed the name with one Abdul Karim Sk. against the share No. 2460. Further he submitted that he was not aware about the fact of deleting his name with one Abdul Karim Sk and he came to know about the same only after publishing of list before election and coming to know about the same and after an enquiry made by him, he lodged the F.I.R. against the present accused/petitioner along with others. The learned counsel for the informant,

accordingly, raised vehement objection in granting the accused/petitioner with the privilege of pre-arrest bail.

7. After considering the submissions made by the learned counsels appearing on behalf of the parties, I have also perused the Case Diary and it is seen that the name of the present informant was deleted and replaced by the name of one Abdul Karim Sk. against the share No. 2460, while the present accused/petitioner was discharging his duty as a Secretary, Geramari Samabai Samity. The I.O. has also collected sufficient incriminating materials against the present accused/petitioner and from the note of the I.O., it is seen that he is not cooperating the I.O. and did not disclose some relevant facts and also failed to produce some relevant documents in connection with this case. It is a fact that he appeared before the I.O. after obtaining the interim pre-arrest bail and his statement is also recorded under Section 161 Cr.P.C., but it is seen that he is refusing to disclose some other relevant facts of this case taking the advantage of interim protection, rather the possibility of hampering or tampering the witnesses at this stage also cannot be out rightly denied. In this context, a judgment of the Hon'ble Apex Court passed in **P. Chidambaram Vs. Directorate of Enforcement**, reported in **(2019) 9 SCC 24**, can be relied on, wherein in paragraph No. 83 of the said judgment, it has been held as under:

"83. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been

collected by the respondent-Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail."

8. In view of discussions made above and also on considering the incriminating materials as well as the report of the I.O. vis-à-vis the nature and gravity of the offence, this Court is of the view that this is not a fit case where the privilege of pre-arrest bail can be granted to the present accused/petitioner and accordingly, the order of interim pre-arrest bail granted to the accused/petitioner on 15.09.2023 is hereby stands vacated. Consequently, the present anticipatory bail application stands rejected.

9. In terms of above, this anticipatory bail application stands disposed of.

10. The Case Diary be sent back.

JUDGE

Comparing Assistant