

GAHC010223462024



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

Case No. : Bail Appln./3295/2024

MUKESH AGARWAL
S/O- GHANASHYAM AGARWAL, R/O- HOUSE NO. 6A, NRIPEN BORA ROAD,
P.S. FATASIL AMBARI, GUWAHATI, DIST. KAMRUP(M), ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE P.P., ASSAM

2:CENTRAL BUREAU OF INVESTIGATION
(CBI)

Advocate for the Petitioner : MR. A K BHUYAN, MR J DAS,MS. N CHOUDHURY,MS B BORA,MR A TALUKDAR

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

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

13-11-2024

Heard Mr. A K Bhuyan, learned counsel for the petitioner and Mr. M Haloi, learned Special Public Prosecutor, CBI for the respondent.

2. Petitioner, namely, **Sri Mukesh Agarwal**, son of Ghanashyam Agarwal, resident of House No. 6A, Nripen Bora Road, Police Station-Fatasil Ambari, Guwahati has filed this application under Section 483 BNSS, 2023 praying for his release on bail in Paltan Bazar Police Station Case No.

288/2024 under Sections 316(5)/318(4)/3(5) of the Bharatiya Nyaya Sanhita, 2023 read with Sections 21 of the Banning of Unregulated Deposit Schemes Act, 2019, corresponding to G.R. No. 4898/2024, in which he was arrested on 21.09.2024 and is in custody since then.

3. It is stated on behalf of the petitioner that he is a Chartered Accountant by profession; from 2011 to 2018 he practiced in his individual capacity and since December 2018 he along with some other Chartered Accountants started a partnership firm in the name and style of M/S. DBA and Company at Dr. B.K. Kakati Road, Near DGP Office at Ulubari, Guwahati. In that regard petitioner has annexed a photocopy of a Certificate of Membership issued by the Institute of Chartered Accountants of India on 13.09.2016 certifying that since 08.09.2016 the petitioner has been admitted as a Fellow of said Institute with a specific Membership number of Guwahati.

4. The case, as per the FIR dated 21.08.2024 lodged by the complainant before the Officer-in-Charge of Paltan Bazar Police Station, is that a huge financial scam has been committed by an organization, namely, "DB Stock Consultancy", owned by Mr. Deepankar Barman along with his fiancé Mona Lisa Das and 7-8 employees of said Consultancy alleging that since the year 2018 the said Consultancy engaging several investors/clients/creditors across Pan India started the process of taking money from the clients convincing them with a guarantee to return their deposits with high interest and in that regard the said Consultancy issued Hundred Rupees Stamp Paper in return as a proof of receiving money towards an unsecured loan. In the said FIR dated 21.08.2024 the complainant also stated that for the last six years the said Consultancy paid money to its clients on time where the profits were shared with its clients/ investors/creditors by paying them in cash, asking them to collect the same from the office of said Consultancy. In the said FIR it is further alleged that for the last three months such payments were irregular and was delayed for months, where only a few clients got their payments and others did not. The complainant stated that he invested an amount of Rupees One Crore with the said Consultancy and like him, several thousands of clients have also invested their money in the said Consultancy amounting to crores of rupees, but the alleged accused Mr. Deepankar Barman fled away along with thousands of crores invested by the clients/creditors/investors. By the said FIR the complainant requested the police authority to register a case against the said "DB Stock Consultancy", all of its employees (named therein) including Mr. Deepankar Barman, owner of the said consultancy, who is missing and also requested the police authority to do the needful for return of their invested principal amount from the said Consultancy.

5. Said FIR dated 21.08.2024 was accordingly registered as Paltan Bazar Police Station Case No. 288/2024 under Sections 316(5)/318(4)/3(5) of BNS, 2023 added with Section 21 of the Banning of Unregulated Deposit Schemes Act, 2019.

6. Mr. Bhuyan learned counsel submitted that the petitioner being a Chartered Accountant by profession, his said partnership firm "DBA and Company" has been providing consultancy service including the service of filing of GST returns and Income Tax returns, etc. by preparing balance sheets of the companies, firms, individuals and other services as per law. For such purposes said partnership firm of the petitioner has been engaged by many individual clients, including said "DB Stock Consultancy" through its proprietor Mr. Deepankar Barman. It is stated that said "DB Stock Consultancy" availed the services of petitioner's said firm "M/S. DBA and Company" and accordingly, the petitioner as a Chartered Accountant submitted and filed the GST returns, Income Tax TDS returns and other Books of Accounts as per the Bank Statements of said Mr. Deepankar Barman and his said Consultancy, as provided to him, being one of his clients. Towards rendering such clientele service, said Mr. Deepankar Barman and his "DB Stock Consultancy" paid the petitioner an amount of Rs. 27,140/- through Bank transaction. Mr. Bhuyan, learned counsel stated that being a licensed professional, the act of rendering such professional service by the petitioner being a Chartered Accountant to his clients, does not amount to any criminal offence/criminal act by the petitioner.

7. It is stated on behalf of the Petitioner that he being a licenced professional Chartered Accountant is no way connected with the case as been alleged and as been stated by the Investigating Officer in his forwarding report dated 21.09.2024 while forwarding the petitioner to the Court. Mr. Bhuyan, learned counsel for the petitioner stated that neither Section 316(5) nor Section 318(4) BNS, 2023 is applicable to the petitioner in the case as the FIR of the case does not disclose any ingredients of those two sections against him so as to keep him in custody since 21.09.2024 for investigation of the case. Mr. Bhuyan, learned counsel also placed that initially the Court by order dated 21.09.2024 remanded the petitioner to the police custody for three days and thereafter by order dated 23.09.20234, he was sent for police remand for another two days. By order dated 25.09.2024, the Court forwarded the petitioner to the judicial custody and since then he is in jail custody. It is stated that subsequent to the above, till date, the Investigating Authority of the case did not ask for his fresh police remand for investigation of the case.

8. Mr. Bhuyan, learned counsel for the petitioner submitted that if a licensed professional like

the petitioner herein who is a chartered accountant by profession, is taken into custody and is kept under custody for so long for rendering professional service to its client, then in that background all the lawyers, advocates rendering their professional service to the alleged criminals have to be arrested and they have to be kept in custody for investigation of such criminal cases. Mr. Bhuyan, learned counsel stated that it is not the case of the prosecution that the petitioner did not cooperate with the investigation of the case. Mr. Bhuyan, learned counsel for the petitioner stated that before his arrest the petitioner was not served with mandatory notice as required under Section 41A CrPC/35(3) BNSS, 2023, though he was cooperating with the investigation of the case.

9. As he is in custody since 21.09.2024 and as the provisions of the Sections 316(5) and Section 318(4) BNS, 2023 are not applicable to the petitioner in the case in hand, therefore, Mr. Bhuyan, learned counsel stated that petitioner's custodial detention is no longer required for investigation of the case and stated that he is entitled for release on bail in said Paltan Bazar PS Case No. 288/2024.

10. Mr. Bhuyan, learned counsel for the petitioner submitted that the Bail Objection filed by the CBI is on the basis of knowledge only and not on the basis of records and therefore, the submissions made by the CBI in its said objection has become unacceptable in law. He has also placed the reply filed by the petitioner to the said objection of the CBI.

11. Mr. Bhuyan, submitted that the petitioner will abide by all such conditions that the Court may impose upon him, on releasing the petitioner on bail in said Paltan Bazar PS Case No. 288/2024.

12. Mr. Bhuyan placed the relevant provisions of the Chartered Accountants Act, 1949; Standard Operating Procedure to be adopted by Police and other Law Enforcing Agencies for investigation, search, seizure, interrogation, detention and arrest of Chartered Accountants issued by the Institute of Chartered Accountants of India; a Judgment of the Hon'ble Supreme Court in the case of *Ramachandra Barathi alias Sathish Sharma V.K. Vs. State of Telangana* [Special Leave to Appeal (Criminal) No. 10356/2022], decided on 21.11.2022, reported in *AIR OnLine 2022 SC 1480*; a recent Order of the Hon'ble Supreme Court in the case of *Ashok Kumar Vs. State of Union Territory of Chandigarh* [Special Leave Petition (Criminal) No. 9949/2023], decided on 01.02.2024 and two Orders of two co-ordinate Benches of this Court, (i) *Deep Jyoti Nath Vs. The State of Assam* (Bail Application No. 480/2023) decided on 22.02.2023 and (ii) *Rabul Saikia Vs.*

The State of Assam (Bail Application No. 1876/2024) decided on 16.07.2024 and submitted that as considered in those cases, the case of the petitioner should be considered for his bail.

13. In addition to the above, Mr. Bhuyan, learned counsel in support of his argument also relied on the decisions of the Hon'ble Supreme Court in the cases of —(i) *Sharat Babu Digumarti Vs. Government (NCT of Delhi)*, reported in (2017) 2 SCC 18 (ii) *Sushila Aggarwal Vs. State (NCT of Delhi)*, reported in (2020) 5 SCC 1; (iii) *Arnab Manoranjan Goswami Vs. State of Maharashtra*, reported in (2021) 2 SCC 427 and (iv) *Satender Kumar Antil Vs. Central Bureau of Investigation and Another*, reported in (2022) 10 SCC 51 submitting for release of the petitioner on bail.

14. Mr. Haloi, learned Special Public Prosecutor for the CBI stated that the Government of Assam on 09.10.2024 transferred the investigation of said Paltan Bazar Police Station Case No. 288/2024 to the CBI and the Union of India gave its approval on 11.10.2024 and pursuant to the same said Paltan Bazar P.S. Case has been re-registered as CBI Guwahati Crime No. RC 221 2024 E 0013 on 14.10.2024. After handing over the relevant case diary to the CBI by the State, Mr. Haloi stated that the CBI could start the investigation of the case from 25.10.2024 only. Mr. Haloi learned Spl. PP, CBI placed the up-to-date relevant case diary.

15. It is submitted by Mr. Haloi, learned Spl. PP CBI that in this short duration of time the CBI could not collect list of transactions made in favour of the "DB Stock Consultancy" and that their investigation is in the nascent stage, as such petitioner needs to be in custody for necessary investigation of the case that involves several crores of Rupees.

16. It is also stated by Mr. Haloi, learned Spl. PP CBI that the proprietor of "DB Stock Consultancy", Mr. Deepankar Barman was arrested from Goa by Assam Police in another Police Case and on being allowed by the Court, said Deepankar Barman was examined by CBI wherein it was revealed that said Barman was following the financial advice of the petitioner and that he had adjusted the deposit amounts by making false consultancy invoices showing the deposits investments as loan in the books of accounts and that he had paid some amount to the petitioner through the banking channel and paid huge amount to him by cash handing over the same at his office. In that regard CBI placed materials where said Barman directed one of his associates to give huge amount to the petitioner in cash.

17. Mr. Haloi, learned Spl. PP CBI submitted that as the case diary reveals that the petitioner being a professional and through his financial knowledge helped the prime accused to run the

illegal money depository scheme without any approval from RBI or SEBI managing the books of accounts of the Consultancy involved in the case. To unearth the conspiracy of all illegal running of money depository schemes by the prime accused with the financial advice of the petitioner who also aided him by managing the books of accounts of the firms of the said prime accused, Mr Haloi submitted that the petitioner should not be released on bail as he is required for further investigation of the case together with the prime accused.

18. From the case diary it is also seen that the prime accused was also operating "DB Stock Broking". Further, said "DB Stock Consultancy" assured the clients/creditors/investors to pay interest (i) @ 120% on yearly scheme, (ii) @ 54% on half yearly scheme, (iii) @ 24% on quarterly scheme, (iv) @ 7% on monthly scheme and (v) @ 1.25% on weekly scheme on their deposits/investments/credited amount. Case Diary reveals that the petitioner was managing all the Books of Accounts of said "DB Stock Consultancy"/"DB Stock Broking" of the prime accused showing such deposits as loans from the clients/creditors/investors.

19. It is submitted that as the matter relates to economic offence involving several crores for which the State suffered enormous financial loss and 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 the petitioner 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 prime accused from the money illegally collected in the name of concerned Consultancy by the prime accused and the other accused persons of the case by cheating the depositors/investors/creditors making false promises to them where the petitioner managed all the Books of Accounts of such money illegally collected that are involved in the case.

20. Considered the judgements cited by both, Mr. Bhuyan, learned counsel for the petitioner and Mr Haloi, learned Special Public Prosecutor for the CBI.

21. Perused the case diary and materials so far collected during investigation of the case placed by the CBI before the Court. Considering that the prime accused of the case has recently been arrested and the petitioner being his main financial advisor and finding incriminating materials in the case diary regarding involvement of the petitioner in the alleged crime, this Court is of the view that it is not a fit case to grant bail to the petitioner in the case at this stage, though he is his custody since 21.09.2024.

22. Accordingly, this bail application of the petitioner, namely, **Sri Mukesh Agarwal**, son of Ghanashyam Agarwal in CBI Guwahati Crime No. RC 221 2024 E 0013 arising out of Paltan Bazar Police Station Case No. 288/2024, corresponding to G.R. No. 4898/2024, stands rejected at this stage.

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

JUDGE

Comparing Assistant