

GAHC010242982024



2024:GAU-AS:12836

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

Case No. : Bail Appln./3520/2024

HEMANTA MADHAV GOGOI
S/O SRI PRASANNA K GOGOI
RESIDENT OF BIJOY NAGAR, WARD NO. 14, PS NORTH LAKHIMPUR, DIST
LAKHIMPUR ,ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP ASSAM

Advocate for the Petitioner : MR S BORTHAKUR, MR SAURADEEP DEY

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

17.12.2024

Heard Mr. S. Borthakur, learned counsel of the petitioner. Also heard Mr. P. S. Lahkar, learned Additional Public Prosecutor representing the State respondent.

2. This application is filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, praying for the release of the petitioner on regular bail in connection with Bihpuria P.S. Case No. 132/2024, dated 23.08.2024 registered under Section 308(4) of BNS with added section 61(2) of BNS *read with* Section 10/13 of the unlawful Activities (Prevention) Act, 1967.

3. The Case Diary was retained, and I have perused the same and heard both sides.

4. In pursuant to the order dated 13.12.2024, Mr. Lahkar, learned Additional Public Prosecutor, has inquired about the matter and submitted that the ground of arrest was not communicated to the present petitioner nor to his family members.

5. It is submitted by Mr. Borthakur, learned counsel for the petitioner, that the present petitioner is no way involved in the alleged offence. He was purely arrested on suspicion, and there is no specific material against the petitioner, neither in the FIR nor in the forwarding report, to attract the Section under which the police have registered the case. At the time of arrest, the petitioner was also remanded to police custody by the learned Sub-Divisional Judicial Magistrate, Lakhimpur without having any jurisdiction, and thus, the detention of the petitioner can be considered illegal. Moreover, the petitioner is working in a college and belongs to a reputed family; and, he is not at all involved in the alleged offence, and there are no criminal antecedents of the present petitioner. Furthermore, there is no allegation against the petitioner that, at any point, he made any demand for money, and in the absence of such an

allegation, a case of demand for money cannot be attracted against the petitioner as registered against him.

6. It is an admitted fact that the ground of arrest was not communicated to the petitioner at the time of arrest, which makes the arrest itself illegal for non-furnishing of the ground of arrest. In this context, Mr. Borthakur, learned counsel for the petitioner relies on the Division Bench decision passed by the Hon'ble Apex Court in the case of **Prabir Purkayastha vs. State (NCT of Delhi)**, reported in **(2024) 8 SCC 254**, and emphasizes paragraphs 17, 19, and 48 of the said judgment, wherein it has been held that *"any person arrested for allegation of commission of offences under the provisions of UAPA or for that matter any other offence(s) has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested person as a matter of course and without exception at the earliest"*.

7. Paragraphs 19, 20, and 21 of the aforesaid judgment read as follows:

"19. Resultantly, there is no doubt in the mind of the Court that any person arrested for allegation of commission of offences under the provisions of UAPA or for that matter any other offence(s) has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested person as a matter of course and without exception at the earliest. The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as, this information would be the only effective means for the arrested person to consult his Advocate; oppose the police custody remand and to seek bail. Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed under [Article 22\(1\)](#) of the Constitution of India.

20. The Right to Life and Personal Liberty is the most sacrosanct fundamental right guaranteed under [Articles 20, 21](#) and [22](#) of the Constitution of India. Any attempt to encroach upon this fundamental right has been frowned upon by this Court in a catena of decisions. In this regard, we may refer to following observations made by this Court in the case of [Roy V.D. v. State of Kerala](#)³:-

"7. The life and liberty of an individual is so sacrosanct that it cannot be

allowed to be interfered with except under the authority of law. It is a principle which has been recognised and applied in all civilised countries. In our Constitution [Article 21](#) guarantees protection of life and personal liberty not only to citizens of India but also to aliens." Thus, any attempt to violate such fundamental right, guaranteed by [Articles, 20, 21](#) and [22](#) of the Constitution of India, would have to be dealt with strictly.

21. The right to be informed about the grounds of arrest flows from [Article 22\(1\)](#) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand. Mere fact that a charge sheet has been filed in the matter, would not validate the illegality and the unconstitutionality committed at the time of arresting the accused and the grant of initial police custody remand to the accused.

8. Mr. Borthakur, learned counsel for the petitioner, further relies on another judgment passed by the Hon'ble Apex Court in the case of **Arvind Kejriwal vs. Central Bureau of Investigation [Criminal Appeal No.3816/2024 arising out of Special Leave Petition (Crl.) No.11023/2024]**, wherein, also it has been held that the non-furnishing of the ground of arrest makes the arrest itself illegal. He further submits that the petitioner has been behind bar for the last 85 days, and considering the length of his detention, he may be released on bail. Being a permanent resident of the addressed locality, he will furnish a genuine bailor and sufficient surety, and there is no chance of absconding if the petitioner is granted bail. Rather, he will extend his co-operation in the further investigation of the case.

9. On the other hand, Mr. Lahkar, the learned Additional Public Prosecutor, submits that the accused/petitioner is involved in the alleged offence and that there is sufficient material available in the case diary showing his involvement in the said offence. He further submits that, although the ground of arrest was not communicated to the accused/petitioner or his family members, this cannot be a valid ground for releasing the accused/petitioner on bail, as the I.O has collected sufficient materials during the investigation. He further submits that the I.O's report indicates that releasing the accused/petitioner on bail may hamper or interfere with the ongoing investigation, and therefore, custodial interrogation may still be required in the interest

of the investigation.

10. After hearing the submissions made by the learned counsels for both sides, as well as perusing the case diary and case record, it is seen that it is an admitted fact that the ground of arrest was not communicated to the accused/petitioner nor to his family members. However, it cannot be denied that there is sufficient incriminating material already collected by the IO against the accused/petitioner. Furthermore, the case diary reveals that there has been significant progress in the investigation, and it is also an admitted fact that the accused/petitioner has been in custody for more than 85 days, including police remand. Thus, the IO had ample opportunity to interrogate the accused/petitioner keeping him in custody. It also appears that, after completion of police remand, the IO did not request for further remand of the accused/petitioner.

11. Therefore, without delving into the merits of the case or other technicalities, I find that the accused/petitioner has been in custody for a considerable period, and the I.O has had ample opportunity to interrogate him. Consequently, further custodial interrogation does not seem necessary in this case, in the interest of justice.

12. Accordingly, it is provided that on furnishing a bond of Rs. 50,000/- (Rupees fifty thousand) only with one surety of like amount to the satisfaction of the learned Chief Judicial Magistrate, Lakhimpur, the accused/petitioner, namely, Sri Hemanta Madhav Gogoi, be enlarged on bail, subject to the following conditions:

- (i) that the petitioner shall make himself available for interrogation by the Investigating Officer as and when required;
- (ii) 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 Court or to any police officer; and

- (iii) that the petitioner shall not leave the jurisdiction of the learned Chief Judicial Magistrate, Lakhimpur, without prior permission.

13. In terms of above, this bail application stands disposed of.

14. Case diary be returned.

JUDGE

Comparing Assistant