

GAHC010245462024



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

Case No. : AB/3079/2024

RAHUL ROY
S/O SRIBASH ROY
R/O HOUSE NO. 2, ADHAR PATH, BASISTHA NAGAR NEAR
BUDSKINDERGARTEN, BASISTHA, DIST. KAMRUP (M), ASSAM, PIN-781028

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. FIRUZ KHAN, RHITUSHREE TALUKDAR, MR. ABHIJIT MENA, MR. T K DAS, MR U CHAUDHURY, MR U CHAUDHURY, DR AZIZ KHAN

Advocate for the Respondent : PP, ASSAM, MR H BETALA (FOR INFORMANT)

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

18.12.2024

Heard Mr. F. Khan, the learned counsel appearing for the petitioner. Also heard Mr. R.R. Kaushik, the learned Addl. Public Prosecutor, Assam along with Mr. H. Betala,

the learned counsel representing the informant.

2. This is an application under Section 482 of the BNSS, 2023 praying for pre-arrest bail in respect of Basistha P.S. Case No.632/2024.

3. The informant Mr. Anil Kumar Kharkia is the owner of North-East Roadways & Global India Logistics. Four persons namely, Mr. Sibum Mandal, Mr. Subham Mandal, Mr. Bipin Kumar and the present petitioner are his employees. The petitioner and Subham Mandal were appointed on the basis of recommendations of Sibum Mandal. The duty of the present petitioner was that he had to disburse money to different business associates by way of Bank transfer.

4. The informant has alleged that on 16.08.2024, he had examined the account books and then it came to light that since the year 2021, the present petitioner had disbursed ₹1,56,000,00/- to different persons not entitled to receive any money from the informant.

5. The informant has further alleged that all the aforementioned four employees hatched a conspiracy to embezzle his money and executed the said operation.

6. In his application, the present petitioner has stated that he did all those transactions on the advice of Bipin Kumar, though he had the knowledge that he was doing illegal acts.

7. Mr. Khan has submitted two points. The first point is that the FIR is dated 05.09.2024. Therefore, the case should have been registered under the penal provisions of BNS, 2023.

8. The second point is that though the petitioner has admitted he had done those transactions, he has come with a clean hand.

9. Mr. Betal has submitted that the offences were committed prior to 01.07.2024. To that effect, Mr. Betal has relied upon a decision of the Rajasthan High Court that was rendered in Vijay Sarma & Anr., vs. State of Rajasthan [S.B. Criminal Misc. (pet.)

No.5522/2024]. In this judgment it has been held that when the offences were committed, the Indian Penal Code was valid. The court further held that though the FIR was lodged after 01.07.2024, if the offences were committed prior to that date, Indian Penal Code will be applicable in those cases.

10. Mr. Betala has further pointed out that since the petitioner has admitted that the transactions which he had done were illegal, he was doing that with a criminal intention. According to Mr. Betala, in such a circumstance, the petitioner is not entitled to have the privilege under Section 482 of the BNSS, 2023.

11. I have considered the submissions made by the learned counsel of both sides.

12. The offences in this case were committed prior to 01.07.2024. Therefore, the police rightly registered the case under the provisions of the Indian Penal Code.

13. This Court is of the opinion that this case requires custodial interrogation. This is not a fit case for granting pre-arrest bail. The petitioner has admitted in his application that he had the knowledge that he was doing illegal acts. By the acts of the petitioner, the informant has lost a huge amount of money. When an accused admits his guilt, he is not entitled to seek any protection of law. Therefore, this Court is of the opinion that the present anticipatory bail application is devoid of merit and stands dismissed accordingly.

The case diary shall be returned.

JUDGE

Comparing Assistant