

GAHC010252372024



2024:GAU-AS:13004

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

Case No. : Bail Appln./3617/2024

RISHIRAJ GOGOI @ GAURAB GOGOI
S/O SRI PRAFULLA GOGOI
R/O NEW LANDMARK APARTMENT, ZOO ROAD, SUNDARPUR, NEAR SHIV
MANDIR, P.S. DISPUR, GUWAHATI, ASSAM

VERSUS

THE CENTRAL BUREAU OF INVESTIGATION
REP BY ITS SPECIAL PUBLIC PROSECUTOR

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

Advocate for the Respondent : SC, CBI,

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

19-12-2024

Heard Mr. Santanu Borthakur, learned counsel for the petitioner and Mr. M Haloi, learned Special Public Prosecutor, CBI for the respondent.

2. By this application filed under Section 483 BNSS, 2023, the petitioner, namely, **Sri Rishiraj Gogoi @ Gaurab Gogoi**, son of Prafulla Gogoi, resident of New Land Mark Apartment, Zoo Road, Sundarpur, Near Shiv Mandir, Police Station-Dispur, Guwahati, has prayed for his release on bail in CBI ACB Guwahati Case No. RC0172024E0006 arising out of Geetanagar Police Station Case No. 174/2024 registered under Sections 61(2)(a)/111(3) /316(5)/318(4) BNS,2023 read with Sections 21(3)/23 of the Banning of Unregulated Deposit Schemes Act, 2019, corresponding to G.R. Case No. 5207/2024, in which he was arrested on 11.10.2024 and is in custody since then.

3. According to the petitioner he is a businessman by profession and with Sri Joy Modak he has opened a Limited Liability Partnership firm, namely, GoMillions LLP. It is stated that said LLP has Certificate of Incorporation by the Ministry of Corporate Affairs, Government of India; has Tax Deduction Account Number, issued by the Income Tax Department; has its Registration Certificate as well as GST Registration Certificate and also has its Registration Certificate issued on 22.07.2022 by the Ministry of Micro, Small and Medium Enterprises, Government of India. Petitioner also stated that said GoMillions LLP also has Certificate of Registration issued by the QCAS Certifications Inc., certifying that it deals in retail sale in E Commerce Websites, retail sale of Perfumery Articles & Cosmetics Products and Home Furnishing Items and further, the said GoMillions LLP has the certificate of recognition issued by the Ministry of Commerce and Industry Department for promotion of Industry and Internal Trade.

4. As per the FIR dated 04.09.2024 of said Geetanagar Police Station Case No. 174/2024 the petitioner with one Joy Modak and some other co-conspirators have been running stock trading business in and around Guwahati, in the guise of said GoMillions LLP, establishing its office at Hatigarh Chariali. The petitioner was apprehended in said Geetanagar P.S. Case and it is found that the petitioner with said Joy Modak and other accused persons of the case have been running stock trading business in the guise of their said Company GoMillions LLP, inducing and soliciting

public to invest their money in the said LLP and thereby managed to collect huge amount of public deposits with false promise to the depositors/investors to give them high return to the extent of double or triple growth etc. of their deposits/investments within a short period of time. Since the accused persons diverted the depositors'/investors' money that was collected from the public by cheating them and all such deposits/investments have been invested in share market for their wrongful and personal gain, by violating the statutory guidelines of the Securities and Exchange Board of India/Reserve Bank of India therefore, they including the petitioner committed a major financial scam by cheating the public with false promise of high return and thereby misappropriated their money with criminal conspiracy for which the accused persons failed to keep their promises made to the depositors/investors. The deposits accepted by the petitioner and other accused persons of the case in the name of said GoMillions LLP are the unregulated deposits and the accused persons of the case have committed a major financial scam by cheating the public with false promise of high return and misappropriated the money by criminal conspiracy and that the deposits accepted by the accused persons of the case in the name of said GoMillions LLP are unregulated deposits. During enquiry it has been revealed that the accused persons of the case with their accomplices have conjointly misappropriated huge amount of public money and they have cheated the public with fraudulent means, criminal breach of trust by hatching criminal conspiracy that equally amounts to an organised crime like economic offence.

5. The petitioner filed this bail application on 25.11.2024 in said Geetanagar P.S. Case stating that he has been falsely implicated in the case with baseless concocted allegations. Though in the FIR it is alleged that petitioner is involved in running stock trading business inducing general public to invest in their business promising a higher return but there was never any such inducement to invest in share market for their wrongful gain, which are baseless and omnibus allegations as in the FIR there is no mention of any of such investors who were cheated by the petitioner in the name of GoMillions LLP. It is also stated by the petitioner that the FIR of the case failed to disclose any cause of action involving any specific investor or a specific period in which the entire allegation of stock trading business was alleged to have been done by the petitioner or his associates.

6. On 28.11.2024 when the matter was listed for the first time, the Court directed the CBI to place the up-to-date case diary pertaining to said Geetanagar P.S. Case fixing the matter on 06.12.2024.

7. On 06.12.2024 when the matter was listed again, on the said date, Mr. Haloi, learned Special Public Prosecutor, CBI submitted that on 05.12.2024 CBI has filed a written objection objecting the bail of the petitioner and also stated that the CBI on 30.11.2024 submitted its chargesheet in the case pertaining to the petitioner and said Joy Modak.

8. However, Mr. Borthakur, learned counsel for the petitioner objected to that stating that the said chargesheet filed by the CBI is incomplete and partial in nature. In that regard, Mr. Borthakur from the said written objection of the CBI filed in this Bail Application placed Paragraph 23 and submitted that the respondent CBI has clearly indicated that the relevant case is under further investigation, where number of witnesses are yet to be examined and vital documents are yet to be collected for the purpose of investigation of the case.

9. Placing the provisions of Section 8 of the Banning of Unregulated Deposit Schemes Act, 2019, Mr. Borthakur submitted that the learned Chief Judicial Magistrate, Kamrup (Metro), Guwahati is not empowered to take cognizance of the offence under the said 2019 Act and therefore, the said Magistrate has also no power to remand any person arrested under the BUDS Act, 2019.

10. Mr. Borthakur stated that in the case in hand it is the Chief Judicial Magistrate, Kamrup (Metro), Guwahati on 11.10.2024 issued the first remand order of the petitioner without having jurisdiction and therefore, the said order being bad in law, the petitioner is entitled for bail in the Geetanagar P.S. Case No. 174/2024 for violation of the provision of the BUDS Act, 2019.

11. Mr. Borthakur, learned counsel also submitted that BUDS Act, 2019 relates to 'merchant' and placing the definition of 'merchant' as defined in the Black's Law Dictionary, Mr. Borthakur stated that the petitioner is not a merchant as provided in said 2019 Act and therefore, said BUDS Act, 2019 is not applicable to the petitioner in the case.

12. Mr. Borthakur also submitted that since the chargesheet filed by the CBI in the case is not complete and partial and the case is still under further investigation and that number of witnesses are yet to be examined as well as vital documents related to the case are yet to be collected that are essential for the purpose of investigation of the case, therefore, Mr. Borthakur stated that the chargesheet filed against the petitioner in the case by the CBI being not complete, the petitioner is entitled for his default bail considering his detention since 11.10.2024.

13. Mr. Borthakur, learned counsel for the petitioner in support of the case of the petitioner,

relied upon the decisions of the Hon'ble Apex Court in the case of *Sharif Ahmed and Another Vs. State of Uttar Pradesh and another* reported in *2024 SCC OnLine SC 726*.

14. Mr. Haloi, learned Special Public Prosecutor for the CBI submitted that the stand of the CBI with regard to the chargesheet filed in the case is same as that it took in the connected Bail Application No. 3663/2024 (Joy Modak @ Jay Modak Vs. State of Assam) filed in the same CBI ACB Guwahati Case No. RC0172024E0006 arising out of said Geetanagar Police Station Case No. 174/2024.

15. Mr. Haloi, learned Special Public Prosecutor, CBI relied on the decisions of the Hon'ble Supreme Court in the case of *Dinesh Dalmia Vs. CBI* reported in *2007 (8) SCC 770*; *Rama Chaudhury Vs. State of Bihar* reported in *(2009) 6 SCC 346* and *Qamar Ghani Usmani Vs. State of Gujarat* reported in *AIR 2023 SC 1901*. Mr. Haloi also placed a decision of the Hon'ble Delhi High Court in the case of *Sanjay Kumar Pundeer Vs. State of NCT of Delhi* decided on 15.09.2023 in Bail Appln. No. 2698/2023.

16. The petitioner herein, Sri Rishiraj Gogoi @ Gaurab Gogoi, son of Prafulla Gogoi and the petitioner of the connected Bail Appln. No. 3663/2024, Sri Joy Modak @ Jay Modak, son of Late Mani Modak, were arrested in connection with CBI ACB Guwahati Case No. RC0172024E0006 arising out of Geetanagar Police Station Case No. 174/2024, but on different dates, i.e., 11.10.2024 and 05.09.2024, respectively. The CBI filed its chargesheet against the petitioner and said Joy Modak @ Jay Modak on 30.11.2024 before the Court of learned Special Judge, CBI, Guwahati.

17. In the connected Bail Appln. No. 3663/2024 of Sri Joy Modak @ Jay Modak, this Court by order dated 19.12.2024 has already considered the contention of the petitioner regarding the said chargesheet filed by the CBI on 30.11.2024 against the petitioner and said Sri Jay Modak as well as the contention of their default bail and accordingly gave its opinion in that regard. As such, in the present case also the view of this Court pertaining to the said chargesheet of the CBI dated 30.11.2024 and default bail of the petitioner, the view is same as that of the order dated 19.12.2024 passed in the connected Bail Appln. No. 3663/2024 of Sri Joy Modak @ Jay Modak.

18. On perusal of the Annexures annexed in this bail application by the petitioner, it is seen that police after apprehending the petitioner at Tinsukia, brought him to Guwahati for further investigation of the case and produced him before the learned Chief Judicial Magistrate (In-

Charge) Kamrup (Metro), Guwahati at 06:00 PM on 11.10.2024 as required under the law for production of a person arrested in a case as provided in Sections 57, 60A and 167 of the CrPC and the Constitutional provisions.

19. In the case of *Khatri (2) Vs. State of Bihar*, reported in (1981) 1 SCC 627, the Hon'ble Supreme Court have held that –

“7. There are two other irregularities appearing from the record to which we think it is necessary to refer. In the first place in a few cases the accused persons do not appear to have been produced before the Judicial Magistrates within 24 hours of their arrest as required by Article 22 of the Constitution. We do not wish to express any definite opinion in regard to this irregularity which prima facie appears to have occurred in a few cases, but we would strongly urge upon the State and its police authorities to see that this constitutional and legal requirement to produce an arrested person before a Judicial Magistrate within 24 hours of the arrest must be scrupulously observed. It is also clear from the particulars furnished to us from the records of the Judicial Magistrates that in some cases particularly those relating to Patel Sahu, Raman Bind, Shaligram Singh and a few others the accused persons were not produced before the Judicial Magistrate subsequent to their first production and they continued to remain in jail without any remand orders being passed by the Judicial Magistrates. This was plainly contrary to law. It is difficult to understand how the State continued to detain these accused persons in jail without any remand orders. We hope and trust that the State Government will inquire as to why this irregularity was allowed to be perpetrated and will see to it that in future no such violations of the law are permitted to be committed by the administrators of the law. The provision inhibiting detention without remand is a very healthy provision which enables the Magistrates to keep check over the police investigation and it is necessary that the Magistrates should try to enforce this requirement and where it is found to be disobeyed, come down heavily upon the police.”

20. It is seen from the order dated 11.10.2024, the learned CJM (i/c) categorically mentioned that it was a holiday due to Durga Puja and Remand Advocate/Legal Aid Defence Counsel have already left. On being enquired by the learned CJM (i/c), the petitioner stated that he will engage

his own advocate and also stated that he does not have any external injury. The petitioner also stated before the CJM (i/c) that he was taking medicines for Diabetic and Uric Acid and that his family members are aware about his arrest. Though the authority concerned prayed for remand of the petitioner for its custody, but as there was no Legal Aid Counsel available at that moment to represent the petitioner, the learned CJM (i/c) being not inclined to remand the petitioner to the custody of the authority on the said day, by its order dated 11.10.2024 directed the investigating officer of the case to place a prayer for police remand of the petitioner on the next day before the concerned duty Magistrate and by the said order dated 11.10.2024 the learned CJM (i/c) forwarded the petitioner for his judicial custody on that day (11.10.2024) directing the Superintendent of Central Jail, Guwahati, to ensure that the petitioner gets the medicines timely in jail and further directed to inform the Hon'ble Special Judge, Assam.

21. Subsequent to that, the petitioner was produced before the learned Sessions Judge, Kamrup (Metro), Guwahati on 14.10.2024 and from the order dated 14.10.2024 annexed to this bail application, it can be seen that the learned Sessions Judge, In-charge, Kamrup (Metro), Guwahati took note of the order dated 11.10.2024 of the CJM (i/c), Kamrup (M), Guwahati and the learned Sessions Judge, by order dated 14.10.2024 directed the Superintendent of Central Jail, Guwahati to produce the petitioner physically before the said Court on 15.10.2024 with the observation that necessary order on the prayer for allowing police remand will be passed after production of the petitioner from judicial custody and accordingly fixed the matter on 15.10.2024 for production and hearing.

22. Considering the above and in said special circumstances, it cannot be said that the first remand of the petitioner was bad in law or being without any authority.

23. It is seen that the learned Special Judge, CBI on 30.11.2024 had endorsed the said charge sheet filed by the CBI in the case. Considering the entire aspects of the matter this Court has already viewed that (as opined in order dated 19.12.2024 in the Bail Appln. No. 3663/2024 of Sri Joy Modak @ Jay Modak) the charge sheet filed by the CBI on 30.11.2024 against the petitioner and said Rishiraj Gogoi in said CBI ACB Guwahati Case No. RC0172024E0006 arising out of Geetanagar P.S. Case No. 174/2024 is very much within the statutory period as prescribed under the law.

24. Considered the materials in the case record placed before the Court by the CBI. Since the CBI has filed the charge sheet in the case, the petitioner, **Sri Rishiraj Gogoi @ Gaurab Gogoi,**

son of Prafulla Gogoi, is directed to approach the appropriate forum for his regular bail in said CBI ACB Guwahati Case No. RC0172024E0006 arising out of Geetanagar Police Station Case No. 174/2024.

25. With the above observation and direction this bails application of the petitioner, named above, stands disposed of.

JUDGE

Comparing Assistant