

GAHC010252372024



2024:GAU-AS:13004

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

Case No. : Bail Appln./3663/2024

JOY MODAK @ JAY MODAK
SO LT. MANI MODAK
R/O HOUSE NO. 249
BIRKUCHI NAMGHAR PATH
P.S. NOONMATI
GUWAHATI
ASSAM

VERSUS

CENTRAL BUREAU OF INVESTIGATION
REP BY THE SC
CBI

Advocate for : SADHAN KALITA
Advocate for : SC
CBI appearing for CENTRAL BUREAU OF INVESTIGATION

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

19-12-2024

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

2. The petitioner, namely, **Sri Joy Modak @ Jay Modak**, son of Late Mani Modak, resident of

House No. 249, Birkuchi Namghar Path, Police Station-Noonmati, Guwahati has filed this application under Section 483 BNSS, 2023 on 28.11.2024, praying 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 05.09.2024 and is in custody since then.

3. This is his second bail application in said Geetanagar P.S. Case. Earlier the Court by order dated 06.11.2024 rejected petitioner's Bail Application No. 2875/2024 in said Geetanagar P.S. Case No. 174/2024.

4. According to the petitioner he is a business man by profession and a partner of Limited Liability Partnership, 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.

5. As per the FIR dated 04.09.2024 of said Geetanagar Police Station Case No. 174/2024 the petitioner with one Sri Rishiraj Gogoi 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 Rishi Raj Gogoi 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.

6. The petitioner stated that he has been falsely implicated in said Geetanagar P.S. Case with baseless and concocted allegations. Though in the FIR it is alleged that he 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 totally baseless and omnibus allegations as in the FIR of the case, investors name have not been mentioned, who were cheated by the petitioner in the name of GoMillions LLP. Petitioner also stated 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.

7. On 2nd December, 2024 when the matter was listed for the first time and was taken up for consideration, counsel for the petitioner took time. The matter was listed again on 06.12.2024 and on the said date, Mr. Haloi, learned Special Public Prosecutor, CBI submitted that on 05.12.2024 CBI 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 another, namely, Rishiraj Gogoi.

8. However, Mr. Kalita, learned counsel for the petitioner objecting the same stated that the said chargesheet filed by the CBI is incomplete and partial in nature and that the learned Special

Judge, CBI did not accept the said charge sheet. In that regard, Mr. Kalita from the said written objection of the CBI filed in this Bail Application placed Paragraph 14 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.

9. On 05.12.2024 petitioner filed an additional affidavit stating that the charge sheet filed by the CBI in the case appears to be interim in nature, stating further that on 04.12.2024, when the engaged counsel of the petitioner approached the office of the learned Special Judge, CBI, to collect the certified copy of the said charge sheet filed by the CBI in the case that was applied on 03.12.2024, said counsel was informed that due to some technical reasons the charge sheet was returned to the Investigating Agency.

10. Considering the submissions of the parties, the Court by order dated 06.12.2024 directed the Registry to obtain up-to-date orders passed by the learned Special Judge, CBI relating to the charge sheet filed by the CBI on 30.11.2024 in said CBI ACB Guwahati Case No. RC0172024E0006 arising out of Geetanagar P.S. Case No. 174/2024 and fixed the matter on 11.12.2024.

11. On 10.12.2024, another additional affidavit was filed on behalf of the petitioner annexing a copy of the charge sheet filed by the CBI in the case on 30.11.2024 along with a copy of the order dated 30.11.2024 of the learned Special Judge, CBI, Assam, Additional Court No.1 in the said CBI Case.

12. Placing the charge sheet filed by the CBI in the case on 30.11.2024 as well as the order dated 30.11.2024 of the learned Special Judge, CBI, Assam, Additional Court No.1 passed in the said CBI Case, Mr. Kalita learned counsel for the petitioner submitted that it is clear and transparent that the CBI failed to submit the complete charge sheet in the case within the statutory period of time as in the said charge sheet the CBI itself stated that the relevant case is under further investigation, that relevant documents are yet to be collected and that concerned witnesses are yet to be examined in the case so as to prove the offense against the accused persons and that further investigation into the role of the accused persons have been kept open.

13. Mr. Kalita, learned counsel for the petitioner also submitted that from the order of the learned Special Judge, CBI, Assam, Additional Court No.1 dated 30.11.2024 passed in the said CBI Case it is also clear that the charge sheet submitted by the CBI on 30.11.2024 in the case

was without the documents. Mr. Kalita submitted that the law is settled that along with the charge sheet all the documents relied by the prosecution to bring home the charge against the accused must be filed. In that regard, Mr. Kalita also placed the provisions of Section 173(5) CrPC.

14. Mr. Kalita, learned counsel for the petitioner, therefore, submits that since the charge sheet filed by the CBI in the case on 30.11.2024 was incomplete and partial and moreover, it was filed without the documents relied by the CBI and since the said charge sheet of the CBI filed in the case on 30.11.2024 has not been accepted by the Court of learned Special Judge, CBI, Assam, therefore, considering his detention since 05.09.2024, the petitioner is entitled for his default bail as in the meanwhile, on 04.12.2024 the petitioner has completed the statutory period of detention of 90 days.

15. Mr. S. Kalita, learned counsel in support of his argument for the petitioner relied upon the decisions of the Hon'ble Apex Court in the cases of *Rakesh Kumar Paul Vs. State of Assam* reported in *2017 (15) SCC 67*; *Satender Kumar Antil Vs. CBI* reported in *(2022) 10 SCC 51* as well as *Ritu Chhabaria Vs. Union of India and Others* reported in *2023 4 Supreme 525*. However, Mr. Kalita, learned counsel for the petitioner submitted that the case of *Ritu Chhabaria* is presently pending for review before the Hon'ble Apex Court.

16. Mr. Haloi, learned Special Public Prosecutor for the CBI placed the provisions of Section 173(2)(i) of the CrPC as well as the provisions of Section 193(3)(i) of the BNSS, 2023 and from the charge sheet of the CBI filed in the case on 30.11.2024 that is annexed by the petitioner in his additional affidavit filed on 10.12.2024, submitted that in its said charge sheet filed in the case on 30.11.2024 against the petitioner and said Rishiraj Gogoi the CBI complied with all the provisions of Section 173(2)(i) of the CrPC/Section 193(3)(i) of the BNSS, 2023 enclosing the List of Witnesses as Annexure-I and List of Documents as Annexure-II under the heading "List of enclosures" at Para 20.

17. From the said charge sheet filed in said CBI case on 30.11.2024, Mr. Haloi placed the Paragraphs 16.15, 16.16 and 16.17 and further stated that at Para 16.17 of the said charge sheet, the CBI categorically prayed before the Court that the original documents seized/collected in the case during the course of investigation and the original statements of witnesses recorded during investigation be ordered to be kept with CBI for further investigation of the case and the learned Special Judge, CBI have not rejected the said prayer of the CBI.

18. Mr. Haloi, learned Special Public Prosecutor for the CBI also submitted that on perusal of the said charge sheet filed in the case by the CBI on 30.11.2024, the learned Special Judge, CBI by its order dated 30.11.2024 neither returned, nor rejected the said charge sheet filed by the CBI in the case and only directed the CBI to submit the relevant documents at the earliest, further directing to put up the charge sheet along with the case record. Mr. Haloi placing the said order dated 30.11.2024 of the learned Special Judge, CBI submitted that the submission made on behalf of the petitioner that the said charge sheet of the CBI filed in the case on 30.11.2024 has not been accepted by the Court of learned Special Judge, CBI is wrong and erroneous.

19. Mr. Haloi, learned Special Public Prosecutor for the CBI for such reasons negated the contention of petitioner for his default bail in the case on the ground of non-submission of complete charge sheet in the case against the petitioner before 04.12.2024.

20. Mr. Haloi, learned Special Public Prosecutor also stated that the charge sheet filed in the said CBI case before the learned Special Judge, CBI on 30.11.2024 against the petitioner and said Rishiraj Gogoi is complete. Mr. Haloi also stated that in the said charge sheet, CBI categorically stated that further investigation into the role of the charge sheeted accused persons and others have been kept open in the case under Section 193(9) of the BNSS 2023 and that during investigation with regard to the other accused persons of the case, separate supplementary final report will be filed before the Special Court in due course.

21. 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*; *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.

22. Considered the judgments cited by the learned counsels for the parties, both in favour of the petitioner as well as on behalf of the respondent CBI.

23. Also perused the charge sheet filed by the CBI in the case on 30.11.2024 with regard to the petitioner and the other accused Rishi raj Gogoi that is annexed by the petitioner in his Additional Affidavit filed on 10.12.2024.

24. Petitioner's only contention is that the chargesheet filed in the case on 30.11.2024 is not

complete as it did not annex the documents with it and the said charge sheet has not been accepted by the Court of learned Special Judge, CBI, therefore, he is entitled for default bail, as on 04.12.2024 petitioner has completed the statutory period of detention in the case.

25. Section 173 CrPC and Section 193 of the BNSS, 2023 relates to "Report of police officer on completion of investigation". Section 173(2)(i) CrPC equivalent to Section 193(3)(i) BNSS, 2023 provides for –*Forwarding of the police report to the Magistrate empowered to take cognizance of the offence stating the relevant requirements that are required to be contained in the said police report.*

26. Section 173(5) of the CrPC equivalent to Section 193(6) of the BNSS provides for the requirement of the police officer to forward the documents that are required to be placed before the Magistrate along with such police report in respect of a case to which Section 170 CrPC (Section 190 BNSS) applies, which are – (a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation; (b) the statements recorded under Section 180 of all the persons whom the prosecution proposes to examine as its witnesses.

27. The Hon'ble Supreme Court, comprising a Bench of three Hon'ble Judges, in the case of *Central Bureau of Investigation Vs. R. S. Pai* reported in (2002) 5 SCC 82 have held that –

“**7.** From the aforesaid sub-sections (Section 173 CrPC), it is apparent that normally, the investigating officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or the charge-sheet, it is always open to the investigating officer to produce the same with the permission of the court. In our view, considering the preliminary stage of prosecution and the context in which the police officer is required to forward to the Magistrate all the documents or the relevant extracts thereof on which the prosecution proposes to rely, the word "shall" used in sub-section (5) cannot be interpreted as mandatory, but as directory. Normally, the documents gathered during the investigation upon which the prosecution wants to rely are required to be forwarded to the Magistrate, but if there is some omission, it would not mean that the

remaining documents cannot be produced subsequently. Analogous provision under Section 173(4) of the Code of Criminal Procedure, 1898 was considered by this Court in *Narayan Rao Vs. State of A.P.* (reported in *AIR 1957 SC 737*) and it was held that the word "shall" occurring in sub-section (4) of Section 173 and sub-section (3) of Section 207-A is not mandatory but only directory. Further, the scheme of sub-section (8) of Section 173 also makes it abundantly clear that even after the charge-sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to the investigation. In such cases, there cannot be any prejudice to the accused. Hence, the impugned order passed by the Special Court cannot be sustained."

28. It is settled that no investigating agency is empowered to conduct a 'fresh', 'denovo' or 're-investigation' in relation to the offence for which it has already filed a report in terms of Section 173(2) CrPC. It is only upon the orders of the higher Courts empowered to pass such orders that the concerned investigation can be conducted, in which event the higher Courts will have to pass a specific order with regard to the fate of the investigation already conducted and the report so filed before the Court of the Magistrate. Further, any such investigation would, obviously lead to the filing of a supplementary report that shall be dealt with as a part of the primary report[(2013) 5 SCC 762 9 (*Vinay Tyagi Vs. Irshad Ali*)].

29. It is also settled that under Section 173(8) CrPC [Section 193(9) BNSS, 2023] permits further investigation when first facts come to light or defective investigation is detected in course of trial, further investigation even after cognizance being taken by the Court and for holding further investigation the police is required to inform the Court and seek its formal permission in that regard.

30. After discussing the Constitution Bench Judgment in *K. Veeraswami Vs. Union of India*, reported in (1991) 3 SCC 655 and *CBI Vs. R.S. Pai* (supra) as well as *Narayan Rao Vs. State of A.P.* (supra) and considering the provisions of Section 2(r) read with Sections 173(5) and 173(8) CrPC and Section 173(2) CrPC, the Hon'ble Supreme Court in the case of *Narendra Kumar Amin Vs. CBI*, reported in (2015) 3 SCC 417 have held that-Filing of the police report containing the particulars as mentioned under Section 173(2) CrPC amounts to completion of filing of the report

before the authority concerned, i.e., before the Court or the Magistrate, as the case may be.

It is not the case of the petitioner that the CBI did not comply with the provisions of Section 173(2) [Section 193(9) BNSS, 2023] while filing the charge sheet on 30.11.2024 against the petitioner and said Rishi Raj Gogoi in the case before the learned Special Judge, CBI, Guwahati.

31. As per the provisions of law laid down by the Hon'ble Apex Court the documents with the charge sheet are required to be furnished so that on consideration of the report along with the relevant documents submitted by the police/investigating agency, the Court or the Magistrate, as the case may be, in exercising its judicious mind can take cognizance of the offence alleged with regard to the accused person of the case. Again, after taking cognizance of the offence by the Court or the Magistrate, the documents on which the prosecution relies to prove the offence stated in the said report, i.e., charge sheet are to be provided to the accused person for his defence, so that the accused is not prejudiced.

32. In the present case the CBI has already submitted the charge sheet against the petitioner and said Rishi Raj Gogoi on 30.11.2024 and the said police report filed in the case after investigation has not been disagreed by the learned Special Judge, CBI, nor ignored the said opinion expressed by the Investigating Officer of the case and have also not returned the said charge sheet to the CBI, except directing the CBI to submit the relevant documents at the earliest finding that the relevant documents have not been submitted along with the chargesheet.

33. Further, the Court of the learned Special Judge, CBI as of now have also not rejected the prayer made by the CBI in the said charge sheet at Para 16.17 by which the CBI categorically prayed before the Court that the original documents seized/collected in the case during the course of investigation and the original statements of witnesses recorded during investigation be ordered to be kept with CBI for further investigation of the case.

34. 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 and for the reasons above, this Court is of the view that the charge sheet filed by the CBI on 30.11.2024 against the petitioner and said Rishi Raj 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.

35. Considered the materials in the case record placed before the Court by the CBI. Since the CBI has filed the chargesheet in the case, the petitioner, **Sri Joy Modak @ Jay Modak**, son of Late Mani Modak, 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.

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

JUDGE

Comparing Assistant