GAHC010270632023

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

Case No. : AB/4048/2023

RANJAN KUMAR SARMAH
S/O LATE PRAFULLA SARMAH
R/O POLOFIELD, BAMUNGAON, NEAR NAMGHAR, P.O. AND P.S. TEZPUR,
DIST. SONITPUR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP ASSAM

Advocate for the Petitioner : MR. P J SAIKIA, SR. ADV

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

19.04.2024

Heard Mr. A. Tiwari and Mr. J. Kotoki, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State respondent as well as Mr. S. K. Singh, learned senior Advocate assisted by Mr. B. Pushilal, learned counsel for the respondent No.2 as

informant.

2. This is an application filed under Section 438 of the Cr.P.C. by the petitioner Sri Ranjan Kumar Sarmah praying for anticipatory bail in connection with Tezpur P.S. Case No.871/2023 registered under Sections 409/420 of the IPC.

3. Case diary called for has been received and perused the same.

4. I have heard the learned counsel from both the sides. It is submitted by Mr. A. Tiwari, learned counsel for the petitioner that the present anticipatory bail is sought for by the accused petitioner in connection with Tezpur P.S. Case No.871/2023, but for the same set of incidents, the first FIR was lodged against one Deepjyoti Nath with the allegation of misappropriation of money deposited in Mahabhairab Cooperative Urban Bank Limited and was lodged by one Sri Prabin Chandra Lahkar, the Chief Executive Officer (CEO) of Mahabhairab Cooperative Urban Bank Limited after an audit done by the Reserve Bank of India (RBI) w.e.f. 18.09.2023 to 23.09.2023. Subsequently, the second FIR was lodged with the same allegation of misappropriation of money, and subsequently, the present FIR which was lodged by the CEO, Mahabhairab Cooperative Urban Bank Limited and the same has been registered as Tezpur P.S. Case No.871/2023 and subsequently another FIR was lodged by Tezpur Bar Association which was registered as Tezpur P.S. Case No.894/2023 with the allegation that a huge amount of money has been misappropriated which was deposited on behalf of Tezpur Bar Association as well as individually by the members of the Bar Association. The first FIR was lodged only after the audit was done by the RBI and as per the audit report, the amount of misappropriation of money was Rs.34 lakhs, and

thereafter, the other two FIRs were lodged with the same allegation of misappropriation of money.

5. It is further submitted by the learned counsel for the petitioner that the petitioner was serving as CEO of the Bank and at the time of submission of his resignation from service, the present informant Sri Prabin Chandra Lahkar was serving as the Accountant of the Bank and the petitioner had handed over his charge to the said informant along with all Books of Accounts and the informant never complained about any kind of irregularities committed by the petitioner during his entire service career, but after 3 years of his resignation, the present FIR as well as the other FIRs have been lodged only to harass the present petitioner and only to escape from the liabilities leveled against the informant.

6. Mr. A. Tiwari, the learned counsel for the petitioner further submitted that during the course of investigation in connection with Tezpur P.S. Case No.815/2013, the necessary seizure list was also made by the police wherein the bank statement details of the Account No.03990380000032, Customer ID No.11258641 were also seized in the name of the prime accused Deepjyoti Nath who had also surrendered before the learned Chief Judicial Magistrate. The present petitioner is absolutely innocent and has not committed any such offence as alleged in the FIR. He resigned from his service way back in the year 2020 and only after the lapse of 3 years, the FIR was lodged with some concocted allegation of misappropriation of money only to harass the present petitioner and to save the skin of the present CEO. The learned counsel for the petitioner further submitted that after obtaining the interim pre-arrest bail dated 01.12.2023, the present petitioner appeared before the I/O and

cooperated with the investigation of this case and he is still ready and willing to cooperate with the I/O for further investigation of the case, if he is granted the privilege of pre-arrest bail.

7. On the other hand, Mr. D. Das, learned Additional Public Prosecutor submitted that the modus operandi of all the cases are same and through which the present petitioner has misappropriated a huge amount of money by transferring money to his own account and the account of his relatives. Though the petitioner took VRS in 2020, but prior to that he had misappropriated a huge amount of money which otherwise affected the public at large. The learned Additional Public Prosecutor further submitted that there are sufficient incriminating materials collected by the I/O against the present accused petitioner and to unearth some other facts of the case, further custodial interrogation of the accused petitioner is necessary, and thus, the learned Additional Public Prosecutor raised vehement objection in granting the present accused petitioner with the privilege of pre-arrest bail.

8. Mr. S. K. Singh, learned senior Advocate for the informant submitted that in all the cases, the way of misappropriation of money is different and the accused petitioner adopted multiple ways to misappropriate money while he was discharging his duty as CEO of Mahabhairab Cooperative Urban Bank Limited. The learned senior counsel for the informant further submitted that the accused petitioner created some fake bank accounts in the name of his relatives and transferred the money to the fake accounts of his relatives and that he also adopted new ways to misappropriate the money while he was discharging his duty as a responsible officer of the Bank.

9. Mr. A. Tiwari, learned counsel for the petitioner submitted that though the third FIR was lodged by Tezpur Bar Association wherein the allegation of misappropriation of money of the Advocates of their individual accounts is also brought, but till date no FIR has been lodged by none of the Advocates though it is alleged that a huge amount of money deposited in the Mahabhairab Cooperative Urban Bank Limited by the Advocates from Tezppur Bar Association.

10. Mr. S. K. Singh, learned senior Advocate for the informant submitted that the Tezpur Bar Association has already lodged the FIR and they may approach with the FIR for misappropriation of money from their individual accounts also. The learned senior counsel for the informant further submitted that such kind of offence comes under the economic offence which constitutes a class apart, and hence, the larger interest of the public should be taken into consideration while granting bail in such economic offence. In that context, the learned senior counsel for the informant also relied on the judgment of the Hon'ble Supreme Court in the case of ***Y. S. Jagan Mohan Reddy vs. Central Bureau of Investigation***, reported in ***AIR 2013 SC 1933*** and emphasized on paragraph Nos.15 & 16 of the said judgment which read as under:-

> "*15) Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.*
>
> *16) While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which*

conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."

11. Mr. S. K. Singh, learned senior Advocate for the informant further relied upon another judgment of the Hon'ble Supreme Court in the case of ***State of Gujarat vs. Mohanlal Jitmalji Porwal and Another***, reported in ***AIR 1987 SC 1321*** wherein the Hon'ble Apex Court has expressed the view "*that a murder may be committed in the heat of the moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner with- out fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest."*

12. After hearing the submission made by the learned counsel from both sides, I have also perused the case diary and the relevant documents annexed along with the petition. The I/O has also submitted his bail objection in the present case wherein it is stated that the present accused petitioner while working as a bank employee had misappropriated a huge amount of money which is more that Rs.3 crores and to unearth some of the facts of the case, the custodial interrogation of the accused petitioner would be necessary.

13. From the materials available in the case diary, it is seen that during

the tenure of the accused petitioner as the CEO from 2014 to 2020, he created various fake bank accounts by using User ID of the bank staff and all fake accounts were created without any valid documents, and thus, withdrew the huge amount of money which comes into light only after the audit made by the RBI.

14. Thus, it is seen from the materials available in the case diary as well as from the report of the I/O that the custodial interrogation of the accused petitioner may be necessary for the purpose of investigation and if the petitioner is granted with the privilege of pre-arrest bail, it may hamper with the investigation of this case particularly in such kind of economic offence. In this context, the decision of the Hon'ble Apex Court in the case of P***. Chidambaram vs. Directorate of Enforcement,*** reported in ***(2019) 9 SCC 24*** can be relied on wherein in paragraph No.83 of the said judgment reads as under:-

> "***83.*** *Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail."*

15. In view of the detailed discussion made herein above and considering all aspects of the case including the gravity of the offence, I do not find it a fit case to extend the privileged of pre-arrest bail to the

present accused petitioner, and accordingly, the instant pre-arrest bail application stands rejected.

16. The interim pre-arrest bail granted by this Court vide the order dated 01.12.2023 is hereby stands vacated.

17. In view of the above, the instant bail application stands disposed of.

JUDGE

Comparing Assistant