

GAHC010282612023



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

Case No. : AB/4212/2023

NIRHANDRA THAOSEN
S/O LATE SONOT THAOSEN
DEPUTY REGISTRAR, NAGAON
R/O NAYAN PATH
LNB ROAD, HATIGAON
GUWAHATI, KAMRUP (M), ASSAM
PIN-781038

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

09.01.2024

Heard Mr. I.H. Saikia, learned counsel for the applicant. And also heard Mr.

Makhan Phukan, learned Public Prosecutor, Assam for the state respondent.

2. This application, under Section 438 of the Code of Criminal Procedure, 1973, is preferred by accused/applicant, namely, **Shri Niherendra Thousan** who has been apprehending arrest in connection with **Cyber P.S. Case No.12/2023**, registered under Sections **120(B)/419/420 IPC**, for granting pre-arrest bail.

3. The said case has been registered on the basis of an FIR lodged by one Papu Gogoi, ACS, Circle Officer, Dispur Revenue Circle on 02.11.2023.

4. The essence of allegations made in the FIR, against the present applicant is that it has come to the notice of the informant that a mutation order was passed online in Dharitree Portal on 05.10.2023 and case No. MET/DIS/2022-23/96042/OMUT against a Deed, bearing Sl. No. 6268 dated 31.12.1995, wherein no offline case record of any notice was issued or order so passed was found to be available in the office of the informant.

5. Mr. I.H. Saikia, the learned counsel for the applicant, submits that this court, vide order dated 14.12.2023, was pleased to extend the privilege of pre-arrest bail to the applicant. But, he could not appear before the I.O. as because he was arrested in connection with another case. Further, Mr. Saikia submits that as soon as the applicant will be granted bail in the said case, he will appear before the I.O. and that he is ready to co-operate with the investigating agency and therefore, it is contended to allow the petition.

6. On the other hand, Mr. M. Phukan, the learned P.P., has produced the case diary before this court and vehemently opposed the petition. Mr. Phukan submits that the Investigating Officer has collected sufficient incriminating materials against the applicant and that his custodial interrogation is very much

required herein this case and therefore, it is contended to dismiss the petition.

7. Having heard the submission of learned Advocates for both sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary, produced before this Court by the learned Public Prosecutor, Assam, with his assistance. Also I have gone through the case law referred by him.

8. It is to be noted here that the parameters, to be taken into consideration, while granting or refusing pre-arrest bail is well settled by Hon'ble Supreme Court in catena of decisions. In the case of **Siddharam Satlingappa Mhetre vs. State of Maharashtra and others**, reported in **(2011) 1 SCC 694**, especially in para 122, Hon'ble Supreme Court had laid following parameters for consideration by the Court:-

“122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) The possibility of the applicant to flee from justice;
- (iv) The possibility of the accused's likelihood to repeat similar or the other offences.
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- (vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of [sections 34](#) and [149](#) of

the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

9. It appears that occurrence, as mentioned in the FIR allegedly took place from 04.10.2023 to 16.10.2023. It also appears that the applicant had worked at Guwahati till 24.07.2023. However, the case diary indicates that the genesis of the offence is the Office of the Sub-Registrar, Kamrup(M) Guwahati, where the applicant was the Sub-Registrar and where fake deeds were prepared with his knowledge and connivance. The case diary also indicates that I.O. has collected sufficient incriminating materials against the applicant. Investigation is going on and some of the co-accused are yet to be arrested. The entire conspiracy, and the persons involved therein are yet to be unearthed. Besides, the offences are also serious in nature having wide ranging ramification upon the society.

10. While keeping the principles, laid down by the Hon'ble Supreme Court in the case of **Siddharam Satlingappa Mhetre** (supra) in mind, the facts and circumstances discussed herein above are examined, this court is left unimpressed by the submission of the learned counsel for the applicant that custodial interrogation of the applicant is not required in the interest of

investigation. His custodial interrogation is indispensable to unearth the conspiracy and the persons involved therein.

11. Accordingly, this court is of the considered opinion that this is not a fit case where the privilege of pre-arrest bail can be granted to the applicant. Accordingly, the petition stands dismissed. Interim order passed earlier stands vacated. The case diary be sent back immediately.

JUDGE

Comparing Assistant