

GAHC010292732023



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

Case No. : Bail Appln./4681/2023

SEWALI DEVI SHARMA
W/O LATE NAGESWAR SHARMA
R/O SILVER OAK RESIDENCY
FLAT NO. 103, LOKHRA
OPPOSITE SARUSAJAI STADIUM
P.O. SAWKUCHI,
P.S. BASISTHA, GUWAHATI
DIST.KAMRUP (M), ASSAM
MOBILE NO. 7002407491

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. B D KONWAR SR. ADV.

Advocate for the Respondent : PP, ASSAM

B E F O R E
HON'BLE MR. JUSTICE ROBIN PHUKAN

29.01.2024

Heard Mr. B.D. Konwar, learned senior counsel for the accused assisted by

Mr. P. Doley, learned counsel for the accused. Also heard Mr. M. Phukan, learned Public Prosecutor for the State respondent.

2. This application, under Section 439 Cr.P.C. is preferred by accused, namely, Sewali Devi Sharma, who has been languishing in jail hajot in connection with Vigilance P.S. Case No. 03/2023, under Sections 120-B/406/409/420/201/468/471 IPC read with section 7A/12/13(1)(a)/13(2) of the Prevention of Corruption Act, 1988 read with section 8 of the Assam FISCAL Responsibility and Budget Management Act, 2005 read with section 41 of the Assam Public Procurement Act, 2017, pending before the learned Special Judge, Assam since 08.05.2023, for grant of bail.

3. It is to be noted here the above mentioned case has been registered on the basis of an FIR lodged by one Pritom Saikia, Inspector of Police, Chief Ministers Special Vigilance Cell, Assam on 03.05.2023.

4. The essence of allegation, made in the FIR, dated 03.05.2023, is that accused Sewali Devi Sharma, while serving as Joint Secretary to the Govt. of Assam cum Executive Chairman cum Director ODL Cell, SCERT, Assam along with co-accused Lakhi Narayan Sonowal, Joint Director SCRT, Jay Chandra Lahkar, Ramijuddin Ahmed, Rubul Ali, Shri Ajit Pal Singh, Saranga More, Kankan Jyoti Das, Saiyed Rahul Amin, Rajesh Joshi, Bijoy Gogoi has misappropriated Govt. revenue, to the tune of Rs.105 Crores.

5. Mr. Konwar, learned senior counsel for the accused, submits that:-

- (i) the accused was arrested on 03.05.2023, and since then she has been languishing in jail hajoot for more than seven months;
- (ii) the accused is a women;
- (iii) she is also sick and suffering from different ailments ;

- (iv) investigation has already been completed and her custodial detention may not be required in the interest of investigation ;
- (v) the entire case rest on documentary evidence and as all the documents have already been collected and seized there is no scope of interference in the investigation of the case;
- (vi) the accused is ready to face trial and will appear before the court below on each and every date;
- (vii) there is no flight risk and that stringent condition may be imposed;
- (viii) all the accused arrested herein this case had already been enlarged on bail and on the ground of parity she is also entitled to bail;

Under these circumstances, Mr. Konwar, the learned senior counsel has contended to enlarge the accused on bail.

6. Per contra, Mr. Phukan, learned P. P. has opposed the petition on the following grounds:-

- (i) that, the present accused is the kingpin of the offence;
- (ii) that, the offences are very serious in nature and as such the length of detention is irrelevant;
- (iii) that, the offence is an economic offence involving an amount of Rs.105 Crore;
- (iv) that, though the plea of health is taken, yet the Govt. has constituted a Medical Board to examine her health condition and the report of Medical Board reveals that her health condition is normal;
- (v) that, the role, so played by the accused, cannot be equated with the role of other accused and as such the ground of parity will not

be applicable in her case; and in support of such a contention, the learned P.P. has referred to a decision of Hon'ble Supreme Court in **Tarun Kumar vs. Assistant Director, Directorate of Enforcement**, Criminal Appeal No. OF 2023 [@ SLP (Crl.) No. 9431 of 2023].

- (vi) that, after commission of the offence the accused was absconding and she was arrested from a Hotel of Ajmer, Rajasthan, and that there is also flight risk;
- (vii) that, the offence was committed in a calculated and pre-planned manner over a period of time and it is more serious than a case of murder;
- (viii) that, some of the co-accused are her family members and with them she had siphoned off such a huge amount of revenue from the state ex-chequer and there is every possibility of influencing the witnesses if she is enlarged on bail;

Under the aforesaid facts and circumstances, Mr. Phukan has contended to dismiss the petition.

7. Having heard the submission of learned Advocates for both the parties, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record received from the learned Court below.

8. It is not in dispute that the accused was arrested on 08.05.2023, and since then she has been languishing in jail hajoot. It is also not in dispute that the amount misappropriated herein this case is Rs.105 crores. But, the learned counsel for the accused has addressed the court not on merit of the case, but

emphasized on the ground of being women and sick and on the ground of parity and also on the ground of length of detention.

9. That, the contention of the learned senior counsel for the accused is that the accused is sick and suffering from different ailments, is disputed by the learned P.P. by placing on record a report of the Medical Board (**Annexure- IX** of the bail objection petition) which indicates that the basic parameters, including her blood pressure, are clinically stable. In view of the said report, the contention of Mr. Konwar, the learned senior counsel for the accused that on the ground of sickness she is entitled to bail, is found to be without merit.

10. That, coming to the next submission of Mr. Konwar, the learned senior counsel for the accused that the accused being woman and on the ground of length of detention; is entitled to bail, I find this ground also unimpressive in view of the enormity of the offence and in view of the manner a huge amount of Govt. revenue is siphoned off in collusion with the co-accused, some of whom are her family members. Moreover, it being the economic offence it need to be visited with different approach as held by Hon'ble Supreme Court in the case of **Nimmagadda Prasad v. CBI**, reported in **(2013) 7 SCC 466**, and in the case of **State of Bihar and Another vs. Amit Kumar** reported in **(2017) 13 SCC 751**. It is to be mentioned here that in the case of **Nimmagadda Prasad** Hon'ble Supreme Court in the said case has held as under:-

"25. 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 a grave offence affecting the economy of the country as a whole and thereby posing

serious threat to the financial health of the country.”

11. It is also to be noted here that in the case of **State of Gujarat v. Mohanlal Jitamalji Porwal**, reported in **(1987) 2 SCC 364** Hon’ble Supreme Court has held as under:-

“..... The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of 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 without 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. It is a fact that investigation of the case has already been completed and charge sheet has already been filed before the learned court below and now the case is pending for prosecution sanction. It is now well settled in the case of **Pragyna Singh Thakur v. State of Maharashtra**, reported in the case of **(2011) 10 SCC 445**, that when charge-sheet is filed within 90 days, then the right to be released on bail, can be only on merits. But, in the case in hand the learned senior counsel for the accused has not addressed this Court on merits of the case.

13. Indisputably, some of the co-accused have already been enlarged on bail. But, it appears that at the material time of occurrence the accused was serving

as the Joint Secretary to the Govt. of Assam cum Executive Chairman cum Director, ODL Cell, SCERT. The role, played by her in commission of the offence, is more serious than the role played by the co-accused who has already been enlarged on bail. On this count, the learned P.P. submits that the case of the accused is not in the same pedestal with that of the other accused and on the ground of parity she is not entitled to bail. I find force in such submission of learned P.P. and the case law **Tarun Kumar** (supra), referred by him also advances his argument, where it has been held that:- "*It may be noted that parity is not the law. While applying the principle of parity, the Court is required to focus upon the role attached to the other accused persons....*"

14. Thus, having considered the submission of learned Advocates of both the parties and also the nature and gravity of the offence and the punishment of the same and also balancing the individual interest of the accused with that of the societal interest, this court is of the view that this is not a fit case where the privilege of bail can be granted to the accused. Accordingly the petition stands dismissed.

15. In terms of above, the bail application stands disposed of.

JUDGE

Comparing Assistant