

GAHC010295252023



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

Case No. : Bail Appln./4708/2023

BAHARUL ISLAM KHAN
S/O MUKLESUR RAHMAN KHAN HOUSE NO. 3, MOROMI PATH, P.O.
HATIGAON, P.S. HATIGAON DIST. KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR J ISLAM

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 12.01.2024

Heard Mr. A. M. Bora, learned senior counsel assisted by Mr. B. P. Borah, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State.

This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, *Baharul Islam Khan*, who has been detained behind the bars since 15.12.2023 in connection with Crime Branch P.S.

Case No. 08/2023 under Sections 120B/ 420/ 468/ 471/ 409/ 477 of the Indian Penal Code.

The gist of accusation in this case is that one Bhupen Kumar Das had lodged an FIR before the Commissioner of Police, Guwahati, on 28.11.2023, *inter alia*, alleging that he is the recorded Pattadar of a plot of land measuring 2 Kathas and 2 Lechas covered by Dag Number 2445 of KP Patta Number 1496 at Panjabari, Bagharbari Main Road, under Satgaon Village in Beltola Mouza of Kamrup (Metro) district; he had inherited the said plot of land after the death of his mother, Late Labanya Bala Das. It is alleged in the FIR that the present petitioner and one Mukshed Ali managed to obtain the sale deed in respect of the said land in connivance with the officials of the Land Record Department without any consent from the first informant.

It is also alleged that the said Mukshed Ali also mutated his name showing the sale deed which was entered into between the present petitioner and the said Mukshed Ali.

It is also stated in the FIR that the mother of the first informant never sold her land to someone and the present petitioner has forged the sale deed on the basis of which he has mutated his name.

Learned senior counsel for the petitioner has submitted that the first informant of the FIR lodged in the present case has also instituted a civil suit which is registered as Title Suit No. 51/2022 and is pending before the Court of learned Civil Judge No. 3, Kamrup(M), Guwahati in which one Jagyeswar Nath and Mukshed Ali have been arrayed as defendants. It is also submitted by learned senior counsel for the petitioner that the petitioner is an Advocate by profession and is a Member of the Gauhati High Court Bar Association and has

been practicing in various courts at Guwahati and does not have any previous criminal antecedents. It is also submitted that the petitioner was engaged as a counsel by the defendant Nos. 1 and 2 of Title Suit No. 51/2022 to defend their case and in support of the said submissions, he has also annexed the vakalatnama of the said defendants in favour of the present petitioner as Annexure- 4 to the bail petition.

Learned senior counsel for the petitioner has submitted that the photocopy of the sale deed which is alleged to have been forged by the present petitioner in this case was given to the present petitioner by the aforementioned defendants of Title Suit No. 51/2022 after the engagement of the present petitioner as the counsel by the defendants and he is in no way involved in the offence alleged in the FIR of the instant case.

It is also submitted by learned senior counsel for the petitioner that the present petitioner joined the profession as an Advocate in the year 2008 and the forged sale deed in question is stated to have been executed in the year 1997 and where the executors were identified by one Pradip Deka and hence, the question of preparing the sale deed by the present petitioner does not arise. It is also submitted by learned senior counsel for the petitioner that in the civil suit pending before the Court of the learned Civil Judge No. 3, Kamrup(M) between the first informant of the FIR lodged against the present petitioner and other two co-accused, there is a prayer made for cancellation of the sale deed No. 6832/97.

Learned senior counsel for the petitioner has also submitted that the petitioner has been detained behind the bars since 15.12.2023 and considering the period of detention, he may be allowed to go on bail.

On the other hand, the learned Additional Public Prosecutor has produced the case diary of Crime Branch P.S. Case No. 08/2023 and has submitted that there are incriminating materials against the present petitioner in the case diary and the offence alleged has been committed by the present petitioner in connivance with several other co-accused and hence he has opposed the grant of bail to the present petitioner.

I have considered the submission made by the learned counsel for the petitioner and the learned Additional Public Prosecutor for the State as well as gone through the materials available on record, including the case diary of Crime Branch P.S. Case No. 08/2023.

It appears from the record that the first informant of the present case has instituted a civil suit against the co-accused, namely, Jagyeswar Nath and Mukshed Ali wherein the genuineness of the sale deed No. 6832/97 has been questioned and prayer for cancellation of the said sale deed has been made.

It also appears that the petitioner is the engaged counsel of the defendants in that civil suit i.e., Title Suit No. 51/2022 and, therefore, it is not unnatural for him to possess the photocopy of the said sale deed in his professional capacity. This Court is also informed about the fact that one of the co-accused, namely, Jagyeswar Nath has already been granted bail by this Court by order dated 11.01.2024 in Bail Application No. 6/2024 and also considering the above facts as well as considering the fact that the present petitioner has already been detained behind the bars for last 28 days, this Court is of the considered opinion that his further custodial detention does not appear to be necessary for fair completion of the investigation of Crime Branch P.S. Case No. 08/2023, if he otherwise cooperates in the investigation of the said case.

In view of the above, the above named petitioner shall be allowed to go on bail of Rs.30,000/- (Rupees Thirty Thousand) only with one surety of like amount to the satisfaction of the Chief Judicial Magistrate, Kamrup(M), subject to the following conditions:-

- (i) That the petitioner shall cooperate in the investigation and shall appear before the Investigating Officer;
- (ii) That the petitioner shall not directly or indirectly make any inducement, threat or promise to any other persons who may be acquainted with the facts of the case so as to dissuade such persons from disclosing such facts before the Investigating Officer.

With the above observation, this bail application is accordingly disposed of.

JUDGE

Comparing Assistant