

GAHC020001972024



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

Case No. : Bail Appln./7/2024

SHRI AMOL TONG @ AMOL PRAKASH TONG
S/O PRAKASH TONG
R/O RANAPRATAB NAGAR
NAGPUR, MAHARASHTRA-440022

VERSUS

THE STATE OF NAGALAND AND 2 ORS
REPRESENTED THROUGH THE SPECIAL SECRETARY HOME (POLICE ESTB.
BRANCH) NAGALAND, DIMAPUR
2:THE SUPERINTENDENT OF POLICE
(CRIME) DIMAPUR
NAGALAND

3:THE INVESTIGATION OFFICER
OF THE CASE

Advocate for the Petitioner : IMKONG JAMIR

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG**

ORDER

Date : 09-05-2024

Heard Mr. Wati Jamir, learned counsel for the applicant. I have also heard Ms. S. Mere, learned PP for the State of Nagaland.

2. This is bail application filed by the accused applicant Shri Amol Tong @ Amol Prakash Tong, under section 439 Cr.P.C praying for his release in connection with Sub-Urban PS case no. 007/2024 arising out of GR case no. 47/2024 under section 420/409/34 IPC.

3. The case of the petitioner is that, he entered into an agreement with the informant for purchase of gaming equipment by the informant. The total cost of the equipment is Rs.70 lacs. As per the agreement, the informant was to make payment of 50% as advance and 50% before shipping of the equipment from China with 18% GST. However, before making full payment for delivery of equipment, the informant lodged an FIR before the Officer-in-Charge, Sub-Urban PS, Dimapur, inter-alia alleging therein that as per the agreement, the informant is to make the payment of 50% as advance and 50% after delivery of the equipment; and that, despite of making payment of Rs.55 lacs which consist 80% of the total cost, the accused applicant has not delivered the equipment to the informant till date.

4. It is submitted that, so far, the informant has paid only Rs. 55 lacs, out of the total cost of Rs. 70 lacs. After receipt of the advance amount from the informant, the accused applicant had already placed an order for machine/equipment from the manufacturing company based at China. However, as the informant did not pay the full amount for the machine as per the terms and condition, the manufacturing company from China could not deliver the machine ordered till date. The informant is yet to pay Rs. 15 lacs along with 18% GST to the accused applicant for onwards payment to the manufacturing company at China for delivery of already ordered

gaming machine. However, despite of several communications regarding the matter, the informant instead of making payment of the remaining amounts for the machine ordered for him has lodged the above-mentioned FIR before the police against the accused applicant on 26.01.2024 giving false statement about the terms and condition of the agreement. Basing on the above FIR, the police has registered the above PS case and arrested him on 09.02.2023 and since then, the accused person along with the co-accused has been languishing in jail till date.

5. The learned counsel for the petitioner submits that in view of the fact what has been stated above, the accused is innocent of the allegation made in the FIR. The delivery of the gaming machine to the informant could not be done because of the fact that the informant has not yet paid the full amount for the cost of the machine as per the terms and condition. The gaming machine as ordered could be delivered only on making full payment of the cost of the machine. And once the full payment is made, the same in turn would be paid to the Company at China and thereafter the machine would be delivered to him as per the terms and condition.

6. The learned counsel for the petitioner further submits that under the facts and circumstances of the case, the allegation of cheating does not arise in as much as in the instant case, there was an agreement entered between the parties according to which the informant is yet to perform his duty; and even assuming that there was some violation in between with regards to the verbal communication, it is immaterial so long as the informant does not performs his duty first by making full payment of the cost of the

gaming machine as per the terms and conditions of the said agreement. Moreover, the case is purely of civil nature which does not attract criminal offence under section 420/409/34 IPC. However, the complainant with ulterior motive has filed the present FIR, so as to harass the present accused/applicant.

7. It is further submitted that by keeping the accused applicant under the jail custody would neither serve any purpose nor the informant would get the machine ordered unless the informant makes full payment for the machine to the manufacturing company in terms of the agreement. Hence, pray for release of the accused applicant. The learned counsel also submits that the accused/applicant is a responsible man, he is ready to furnish adequate bail for his release and to cooperate for further investigation of the case.

8. On the other hand, while referring to the content of the FIR, statement of the informant and accused before the police, the learned PP submits that, so far the informant has made a payment of Rs. 55 lacs to the accused applicant being the cost of gaming equipment; however, the accused failed to deliver the gaming equipment till date nor made any refund of the said payment. The learned PP further submits that despite of several communication made to the accused applicant to deliver the equipment or to refund the payment, the accused instead of delivering the equipment or refunding the payment had evaded the even avoided the call contact of the informant; he even stopped responding his messages; even the legal notice sent to them returned unserved although the their address was correct as later on they were

arrested from the same place.

9. The learned PP further submits that the investigation of the case is almost been completed and since there is a prima facie case against the accused for commission of the alleged offence, she vehemently opposed the release of the accused applicant on bail.

10. Heard both sides. Earlier the CD as called for was produced, however, on 02.05.2024 the learned PP submitted that *in the meantime, the case has already been chargesheeted before the learned court of JMFC, Dimapur*, therefore, the scanned copy of the CD was called for, produced and I have perused the same. The order sheet of the learned JMFC dated 03.05.2024 reflects that the IO of the case is yet to submit the case into chargesheet.

11. The fact of the case on record reveals that after the informant had contacted with the accused applicant through M/S SPARSH ENTERTAINMENT through India Mart Website for purchase of the gaming equipment to set up gaming zone at Dimapur, he even visited the said office at Nagpur. Thereafter, a quotation of gaming equipment was completed and the informant placed an order for purchase of gaming equipment worth Rs. 70 lacs and accordingly, the agreement was entered between the accused/applicant and the informant wherein the informant had agreed to make a payment of 50% as advance and remaining 50% before shipping of the equipment from China. The record further reveals that the informant has paid Rs. 55 lacs out of the total amount of Rs. 70 lacs. And as per the terms and conditions, the informant is to pay another 15 lacs along with 18% GST to the accused/applicant whereafter, the

equipment are to be delivered to him within 45 days. However, it is seen that in between, there has been so many telephonic calls and Whatsapp messages exchanged between the accused/applicant and the informant making allegations and counter allegation against each other. The above exchange of communications indicates that after receipt of the advance payment of Rs. 55 lacs from the informant, the accused applicant started avoiding the informant making some excuses even to the extent of not receiving the legal notice sent to him by the informant demanding the delivery of the equipment to refund of the money due to which the informant having no alternative had lodged the above FIR.

12. Be that as it may, now the accused applicant is inside the jail custody since his arrest on 09.02.2024 and the investigation of the case has almost been completed as submitted by Id PP. As such the further detention of the accused inside the custody for the purpose of interrogation may not be necessary. This court is aware of the fact that the accused is alleged to have committed the offence of cheating against the informant and a huge amount to the tune of Rs. 55 lacs and the offense if proved, may jeopardize the planned investment of the informant. At the same time, this Court has not lose sight of the fact that the investigation of the case has almost been completed and is ready for submission of charge sheet. And, under the circumstances as observed above, the custody of the accused may not be necessary for further investigation of the case. Under the above circumstances, I am of the view that the accused/applicant is entitled to the grant of bail with stringent conditions inorder to ensure his appearance before the investigation

of the case and for trial.

13. In that view of the matter, it is ordered that the accused, Shri Amol Tong @ Amol Prakash Tong, be released on bail on execution of a bail bond of Rs. 5,00,000/- (Rupees five lakhs) with two sureties each of like sum to the satisfaction of the IO of the case with the following conditions:

- (i) That he shall make himself available for further investigation of the case by the police, as and when called for;
- (ii) That he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or any other authority;
- (iii) That he shall remain present before the Court on the date of hearing of the case;
- (iv) That he shall not dispute his identity as the accused in the present case and inform the IO of the case in case of change of his address;
- (v) That the police is at liberty to make an appropriate application for modification/ recalling the order passed by this Court, if for any reason, the accused applicant violates any of the above conditions imposed by this Court.

14. This bail application stands allowed and disposed of.

Sd/-
JUDGE

Comparing Assistant