GAHC010129352020

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

Case No. : AB/2543/2020

NITUL GOGOI
S/O SRI UMESH GOGOI, R/O VILL-KESRGURI, P.O. AND P.S.-GHILAMARA, DIST-LAKHIMPUR, ASSAM, PIN-787053

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. P K DAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

18.12.2020

Heard Mr. D. Borah, learned counsel for the petitioner and Mr. H. Sarma, learned Additional Public Prosecutor for the respondent State of Assam.

2) This application under Section 438, Code of Criminal Procedure, 1973 (CrPC) has been preferred by the petitioner viz. Shri Nitul Gogoi seeking the benefit of pre-arrest bail,

apprehending his arrest, in connection with Ghilamara Police Station Case no. 51/2020, registered under Sections 406/408/409/420/34, Indian Penal Code (IPC), for the 2nd occasion after rejection of his earlier bail application, AB 1288/2020 by an order dated 22.06.2020 after perusal of the materials in the case diary.

3) The First Information Report (FIR) has been lodged by the Chief Executive Officer, Lakhimpur Zila Parishad on 14.05.2020 regarding irregularities of payment of wages to the beneficiaries of Pradhan Mantri Awas Yojona, Gramin [PMAY(G)] under the Subansiri Gaon Panchayat of Ghilamara Development Block. The petitioner is a Gram Sevak of Subansiri Gaon Panchayat and was working as PMAY(G) Nodal Officer in Ghilamara Development Block. The allegations in the FIR are, *inter alia,* that the wages of some eligible beneficiaries of PMAY(G) in Subansiri Gaon Panchayat had been misappropriated by using the job cards of some ineligible persons. It has been alleged that the names and IDs of a number of eligible PMAY(G) beneficiaries were deprived from receiving the wages under the PMAY(G) Scheme and those wages were paid illegally to some other persons using their job cards. It has also been alleged that one Sri Monuram Medok assisted the petitioner with regard to collection of job cards and account numbers of different persons and Sri Monuram Medok has a Mini ATM also. The demands were raised in respect of ineligible persons for wages by the petitioner as a Nodal Officer by using the IDs of persons who were supposed to be beneficiaries. In such manner, the legitimate wages of PMAY(G) beneficiaries had been paid to ineligible persons. In the FIR, the accusations are leveled against the accused persons viz. Sri Dipul Chamuah, BDO, Ghilamara Development Block; Sri Monuram Medok; Sri Sitaram Pegu, the then Secretary of Subansiri Gaon Panchayat; Sri Amit Sharma, Assistant Engineer, Ghilamara Development Block; Sri Papul Baruah, the than Tax Collector, Ghilamara Development Block; Sri Ridip Sonowal, Junior Assistant; etc.

4) It has been submitted by Mr. Borah, learned counsel for the petitioner that by a common order dated 20.10.2020 passed in AB 1363/2020 (Amrit Sharma vs. The State of Assam), AB 1287/2020 (Papul Baruah vs. The State of Assam), AB 1838/2020 (Sitaram Pegu vs. The State of Assam) and AB 1280/2020 (Dipul Chamuah vs. The State of Assam), this Court granted the benefit of pre-arrest bail to Amrit Sharma, Papul Baruah and Dipul

Chamuah while rejecting the prayer of pre-arrest bail in respect of Sitaram Pegu. In such view of the matter, he prays that the petitioner may be granted the benefit of pre-arrest bail on the ground of parity.

5) Mr. Sarma, Additional Public Prosecutor has submitted that he has received the concerned case dairy.

6) I have perused the materials available in the case diary including the statement of the petitioner as well as the statements of some persons who were deprived from legitimate dues, which are available in the case diary. The materials in the case diary substantially corroborate the accusations made in the FIR.

7) The principle of parity in criminal case is that where the case of an accused is similar in all respects as that of another accused the benefit extended to an accused should be extended to the co-accused. The principle is based on the premise that likes should be treated alike. For bringing in the application of the principle of parity, both the accused must be involved in the same crime and must be involved in the similar manner. All the circumstances of the case are to be taken into consideration while considering the application of the principle of parity and the Court has to consider the manner in which the crime was committed and overt or covert acts which are attributed to the accused before the Court and that of the co-accused. When there are differences, the principle of parity would have no application.

8) When the earlier bail application of the petitioner was considered on 22.06.2020, the materials in the case diary were perused and finding sufficient incriminating materials against the petitioner, this Court rejected his prayer for pre-arrest bail. The prayer for pre-arrest bail were granted to Amrit Sharma, Papul Baruah and Dipul Chamuah by a co-ordinate Bench of this Court finding no incriminating materials against them whereas this Court on the earlier occasion, had found sufficient incriminating materials against the petitioner and the allegations against Amrit Sharma, Papul Baruah and Dipul Chamuah are not similar with the allegations leveled against the present petitioner.

9) In the aforesaid view of the matter, this Court does not find any new ground apart

from the ground of parity, for re-consideration of the earlier order dated 22.06.2020. Accordingly, the application preferred by the petitioner for the second time stands rejected.

Return the case diary.

JUDGE

Comparing Assistant