GAHC010148762020

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

Case No. : Bail Appln./2236/2020

VIKASH CHANDRA
S/O SRI VINDESHWAR SINGH, R/O WARD NO. 15, MAHINAVA, P.O. MANER, P.S. MANER, DIST. PATNA, BIHAR-801108, PRESENT ADD. B2/46 VIJYANT KHAND, GUMTI NAGAR, LUCKNOW 226010, UTTAR PRADES

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR A C BORBORA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MIR ALFAZ ALI

ORDER

Date : 01-12-2020

This is an application u/s 439 Cr.P.C. praying for bail by the petitioner, namely, Vikash Chandra, who is in detention in connection with B.I.(EO) P.S. Case No. 19/2020 under sections 120(B)/420/406/409 of the IPC.

Heard Mr. A.C Borbora, learned Senior Counsel for the petitioner and Ms. S. Jahan, learned Addl. Public Prosecutor for the State/respondent. Also perused the case diary produced today.

The allegation made in the FIR was that one Dhrubajit Talukdar availed loan from the informant/bank, on the basis of an agreement and the loanee Dhrubajit Talukdar was supposed to get the sale deed executed and deposited to the bank. However, the sale deed was neither executed nor deposited to the bank and the required procedure for sanctioning loan was also not adhered to.

Learned Senior Counsel Mr. A.C. Borbora submits that the petitioner has not committed any offence, inasmuch as, he was not the sanctioning authority. It was also submitted by Mr. Borbora that in another case being B.I.(E.O.) P.S. Case No. 18/2020, where the similar allegation was made in the FIR, this Court granted bail to the petitioner in BA No. 2480/2020. While granting bail on the similar facts and circumstances in BA 2480/2020, this Court held as under :

> ‘‘Failing to do the lawful duty or negligence in discharging official function by itself does not constitute any offence, unless, such negligence of duty is made an offence by any statute. In the instant case, as per the accusation, the loanee who obtained loan from the bank, failed to get the sale deed executed and furnished to the bank, though, he was required to get the sale deed executed and deposited with the bank. Therefore, the basic allegation of fraud and cheating as per the accusation made in the FIR appears to be against the loanee Gangadhar Kalita and his vendor Hiranbala Kalita. The report of the departmental enquiry clearly shows that no material was found in course of the departmental enquiry suggesting involvement of the petitioner, a bank employee in the offence purportedly committed by the loanee and his vendor. In view of the categorical finding in the said report, there was only negligence of duty on the part of the present petitioner.”

The materials in the case diary and also the bail objection shows that the allegation is basically against the branch manager Sri Nalini Kumar Hazarika, who without ascertaining the authenticity of the account number provided by the applicant has disbursed the loan amount. It is also submitted that the petitioner has been in custody for last 57 days.

Having considered the materials in the case diary and also the nature of accusation as well as the length of detention, this court is of the view that further custodial detention of the petitioner may not be necessary, and as such, the petitioner is allowed to be enlarged on bail of Rs. 20,000/- with a solvent surety of like amount to the satisfaction of the learned CJM, Kamrup(M). The bail shall be subject to the following conditions -

1. The accused/petitioner shall co-operate in the investigation as and when required ;

2. The accused/petitioner 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 him from disclosing such facts either to the Court or to any police officer.

3. The accused/petitioner shall not commit any similar offence, of which he is accused or suspected commission.

Return the case diary. The bail application stands disposed of.

JUDGE

Comparing Assistant