GAHC010165532020

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

Case No. : AB/3304/2020

SIDDIQUE AHMED
Address:S/O LATE HABIBUR RAHMAN
VILL-KHUDRAKUCHI
P.S.-KALGACHIA
DIST-BARPAETA (ASSAM)
PIN-781316

VERSUS

THE STATE OF ASSAM
Address:REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

Advocate for : MR H R A CHOUDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM: Advocate appearing for respectively.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

23-11-2020

Heard Mr. HRA Choudhury, learned Senior counsel assisted by Mr. A. Matin, learned counsel for the petitioners and Ms. S. Jahan, learned Additional Public Prosecutor, Assam for the State.

By this application filed under Section 438 CrPC, the petitioner, namely, Siddique Ahmed apprehending his arrest is seeking pre arrest bail in B.I.(EO) P.S. Case No. 20/2020 registered

under Section 120(B)/420/406/468/471 of IPC read with Section 7 of the Essential Commodities Act, 1955.

Mr. Choudhury, learned Senior counsel for the petitioner submits that though petitioner is the Chairman of the M/S. Uttar Titapani Samabay Samity Limited, Kalgachiya, District-Barpeta he is no way connected with the offences alleged in the said B.I.(EO) P.S. Case No. 20/2020 and it is the Secretary of the said Samabay Samity Limited alone committed the alleged crime while distributing the rice to the beneficiaries of the said Society under the National Food Security Act, 2013 and Targeted Public Distribution System.

Mr. Choudhury, learned Senior counsel further submitted that provisions of the Assam Cooperative Societies Act, 2007 as amended specifically provides the duties, powers and functions of the Members of the Board of Directors of such Samabay Samity under Section 38 and that of the Secretary of such Samabay Samity are provided in Section 49 of the said 2007 Act as amended. By placing the provision of Section 49 (2) of the said 2007 Act, Mr. Choudhury submits that the day-to-day management of the business of the Cooperative Society, making arrangements for various documents and records of the Society, the Chief Executive i.e., the Secretary of the Society to act on behalf of the Board of Directors of Such Society under the 2007 Act and as the relevant FIR of the case itself points its fingers to the Secretary of the Society, the Board Members of the said Society are no way connected with the case.

Further placing the provisions of Section 38 of the said 2007 Act, Mr. Choudhury, learned Senior counsel for the petitioner submits that the provisions of the relevant Section does not indicate the involvement of the petitioners i.e., the Board Members of the society with regard to the business of the Society which is required to be manage and conducted by the concerned Secretary.

For the reasons above, Mr. Choudhury, learned Senior counsel for the petitioner submits that the petitioner representing the Board of Director of said Uttar Titapani Samabay Samity Limited are entitled for their pre arrest bail in said B.I.(EO) P.S. Case No. 20/2020.

Perused the FIR of the case as well as the record of B.I.(EO) P.S. Case No. 20/2020 placed before the Court by the learned Additional Public Prosecutor, Assam.

It is seen that initially there was a preliminary enquiry by the Superintendent of Food and Civil Supplies and Consumer Affairs in the Bureau of Investigation and Economic Affairs, Assam regarding anomalies in the Uttar Titapani Samabay Samity Limited as well as with regard to violation of the provision of the Public Distribution System (Control), 2001 by the Secretary of the Society.

After the preliminary enquiry with regard to the said society, a detailed FIR was submitted by the Superintendent of Food and Civil Supplies and Consumer Affairs before the authorities of BIEO on 06.11.2020.

The FIR discloses that the Samabay Samity took a decision sometime in September, 2018 to deduct 125 grms. of rice from every beneficiaries of the concerned Society, particularly, for the National Food Security Act card holders of the Society. The FIR also discloses that there are altogether 10770 FIC holders including 1317 AAY and 9453 PH holders and in total 48531 beneficiaries of the said Society were deprived of 60 quintals of rice in 26 months under the NFSA-2013.

The case diary placed before the Court reveals that during the investigation necessary seizure were made by preparing the seizure memo and that the portion of rice that were deducted from the 48531 beneficiaries under the NFSA during the period from September, 2018 to April, 2020 were sold in the open market, the benefits which not only went to the Members of the Board of Directors of the Society but also to some other persons for which the concerned Investigating Officer in its note specifically objected with regard to the bail of the petitioners as the accused persons involved in the case need to be investigated upon and if bail is granted to the petitioners, i.e., the Members of the Board of Directors, the investigation of the case will be hampered.

Case diary reveals sufficient incriminating materials with regard to the involvement of the petitioner in the said B.I.(EO) P.S. Case No. 20/2020. The same reveals that the petitioner manipulated and fabricated the Resolution passed by the Members of the Board of Directors of the said Society and is involved in the misappropriation of huge amount of rice meant for the beneficiaries of the said Society under the NFSA.

The case diary also reveals that the Secretary of the said Society along with its

President and the Members of the Board of Directors of the said Society misappropriated 55 quintals of rice per month since January, 2015 to October, 2020 for a period of 4 years 10 months for their personal gain.

The investigation of the case is yet to be completed.

Considering the materials in the case diary, placed before the Court today, the Court is of the view that it is not a fit case to grant the petitioner, the benefit of pre arrest bail in said B.I.(E.O) P.S. Case No.20/2020.

Accordingly, this pre arrest bail application of the petitioner, namely, **Siddique Ahmed** seeking pre arrest bail in said B.I.(EO) P.S. Case No. 20/2020 stands rejected.

Return the case diary herewith.

JUDGE

Comparing Assistant