

# Page No.# 1/ vs Central Bureau Of Investigation on 28 November, 2024

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GAHC010240592024

2024:GAU-AS:11833

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

Case No. : Bail Appln./3487/2024

RAFIKUL ISLAM @ RAFIQUK ISLAM  
S/O ABUL KASHEM SARKAR  
R/O KALDOBA PART-III  
P.S. AGOMONI  
DIST. DHUBRI, ASSAM

VERSUS

CENTRAL BUREAU OF INVESTIGATION,  
REPRESENTED BY DIRECTOR OF CBI, NEW DELHI.

Advocate for the Petitioner : MR A HAWARI, A R MONDAL, MR. S ISLAM

Advocate for the Respondent : SC, CBI,

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BEFORE  
HONOURABLE MRS. JUSTICE MITALI THAKURIA  
ORDER

Date : 28.11.2024 Heard Mr. A. Hawari, learned counsel for the petitioner. Also heard Mr. M. Haloi, learned Special Public Prosecutor, CBI for the respondent.

2. This is an application under Section 483 of BNSS, 2023 praying for grant of bail to the accused/petitioner, who has been arrested in connection with CBI Case No. RC.18E/2024/CBI, under Sections 120(B)/420/409/506 IPC read with Sections 21(1)(3)/23/25 of the Banning of Unregulated Deposit Schemes Act, 2019, corresponding to Dhubri P.S. Case No. 310/2024, under Sections 120(B)/420/409/506 IPC read with Section 21(1)(3)/23/25 of the Banning of Unregulated

Deposit Schemes Act, 2019.

3. It is submitted by Mr. Hawari, learned counsel for the petitioner, that the present accused/petitioner has been arrested in connection with this case on 03.09.2024 based on the F.I.R. lodged by one Kutubuddin Ahmed before the Officer-In-Charge of Dhubri P.S. alleging inter alia that the petitioner, along with 2 (two) other accused persons, are the senior executive partner of online Trading Business and the informant, his brother, his brother-in-law and his brother-in-law's wife invested around Rs. 4,92,000/- on the assurance that they will get 30% interest on the invested amount after expiry of one month. But, after expiry of one month, the accused persons neither paid the interest nor returned the principal amount. Thus, on the basis of the F.I.R., initially, the Dhubri P.S. as Dhubri P.S. Case No. 310/2024, under Sections Page No.# 3/10 120(B)/420/409/506 IPC read with Section 21(1)(3)/ 23/25 of the Banning of Unregulated Deposit Schemes Act, 2019 was registered. The petitioner was also sent for police custody for 5 (five) days and after completion of the police remand, he was produced before the Magistrate on 09.09.2024 and since then, he is in judicial custody. However, subsequently, the case was handed over to CBI for further investigation.

4. It is further submitted that the allegation alleged in the F.I.R. is totally false and fabricated. The petitioner is not the executive member of any company under the name and style "Titan Capital Markets", rather the said company is an Australian Web based Global Forex Trading Company and anyone from any part of the world can himself or herself trade forex at the said company's platform. Though the allegation is brought by the informant, but he himself invested his amount by creating his own ID, being ID No. "Ahmed 31", and now suppressing all those facts, he lodged the false and fabricated case against the present petitioner along with others.

5. Mr. Hawari further submitted that the case was registered under Sections 120(B)/420/409/506 IPC read with Section 21(1) (3)/23/25 of the Banning of Unregulated Deposit Schemes Act, 2019 and the Sections under Indian Penal Code are inserted instead of BNS, 2023, though the BNS has come into effect from 01.07.2024 and the Indian Penal Code has already been repealed. He further submitted that Section 6 of General Clauses Act, 1897 deals with the effect of repeal and the Hon'ble Supreme Court in case of Parnod Ricard of India (P) Ltd Vs. State of Madhya Pradesh & Ors., reported in 2024 LiveLaw (SC) 321, has held that the repeal provision will cease to operate Page No.# 4/10 from the date of repeal and the substituted provision will commence to operate from the date of its substitution subject to specific statutory prescriptions.

6. Mr. Hawari, learned counsel for the petitioner, further submitted that the accused/petitioner is behind the bar for last 86 days and hence, considering his period of detention, he may be enlarged on bail. He further submitted that the co-ordinate Bench of this Court in Bail Appln. No. 2818/2024 had already released the co-accused on bail holding that Section 409 IPC was added on 29.10.2024, when the IPC was already repealed, and Section 316 of BNS was added only on 11.11.2024. During such period, the mandatory period was already over and accordingly, the accused was granted bail on expiry of 60 days mandatory period. Accordingly, he submitted that without going into the merit of the case, the present accused/petitioner may be released on bail on the ground that the case is of 60 days offence and the mandatory period is already over and Section 409 IPC was added after repealing the IPC.

7. Mr. Haloi, learned Special Public Prosecutor, CBI, submitted in this regard that Section 409 IPC is a continuing offence and initially the case was registered by the Assam Police on 03.09.2024 and from the F.I.R. itself and the from the other materials collected by the Investigating Agency, it is very much evident that the transaction of money was continuing since 2023 and hence, inserting of Section 409 IPC will not affect the case as the said Section itself is a continuing offence. He further submitted that in CrI. Ref. No. 01/2024, the Division Bench of this Court has held that any application for bail or criminal petition etc. in connection with any F.I.R. registered prior to 01.07.2024, i.e. before coming into force of BNSS, 2023, are liable to be filed under the provisions of Section Page No.# 5/10 482, 483 and 528 of BNSS, 2023, respectively. Further, in the said CrI. Ref. No. 01/2024, the order of Division Bench of Hon'ble Allahabad High Court is also discussed in paragraph Nos. 18 & 19 of the said order, which reads as under:

"18. The Division Bench of Allahabad High Court, while interpreting Section 531 of the BNSS, 2023 has expressed the same view in Criminal Misc. Writ Petition No.12287 of 2024 [Deepu & Ors. Vs. State of U.P. & Ors., order dated 06.08.2024].

The relevant portion of the above referred judgment is extracted hereunder:

"8. From the perusal of the above section, it is clear that, if any, investigation is pending on the date of repeal of Cr.P.C. then same will continue as per Cr.P.C. As per Section 157 Cr.P.C. (Section- 176 BNSS) investigation would start from the date of registration of F.I.R., therefore if F.I.R. is registered before commencement of new criminal laws then the procedure of the investigation will continue as per the Cr.P.C. because investigation will be deemed to be commenced on the date of registration of the F.I.R. However, in case the F.I.R. is registered after the commencement of new criminal laws for the offence committed prior to the enforcement of new criminal laws then the F.I.R. would be registered under the provision of I.P.C. as the I.P.C. is a substantive law which was prevalent at the time of committing the offence because as per Article 20 of the Constitution of India a person can be convicted of an offence for the violation of law enforced at the time of the commission of the act. ....

" 9. However, the question arises, what would be the procedure of investigation, if the F.I.R. is registered after the commencement of new criminal laws for the offence committed prior to the enforcement of new criminal laws, as such investigation is not saved by Section 531(2)(a) of the BNSS to be conducted as per Cr.P.C. To decide this issue, it is relevant to consider Section 6 of General Clauses Act which provides effect of repealing of any Central Act or Regulation. Section 6 of General Clause Act, 1897 is being quoted as under;

"6. Effect of repeal.- Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment Page No.# 6/10 hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not--

(a) revive anything not in force or existing at the time at which the repeal takes effect;  
or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, any any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

10. From the perusal of Section 6 of the General Clauses Act, it appears that the repeal of Cr.P.C. shall not affect any investigation, legal proceeding or remedy in respect of any liability, penalty or punishment accrued or incurred under the repealed Act and such investigation, legal proceeding or remedy will continue under the repealed Act. It is also clear from Section-6 of the General Clauses Act, the repeal of I.P.C. or Cr.P.C. will not affect any right, liability accrued or incurred under the repealed Act. Therefore, despite repealing of IPC and Cr.P.C., liability to get punishment under IPC will continue and remedy like an appeal under Cr.P.C. will remain as it is but the forum of appeal being procedural in nature will be as per the B.N.S.S."

19. After taking into consideration the decisions rendered by the Hon'ble Supreme Court in Hitendra Vishnu Thakur (supra) and Neena Aneja (supra), the Division Bench of Allahabad High Court held as follows:

"14. From the above-discussed case, the following legal position is culled out:

(i) that amended/repealed procedural law will be applicable retrospectively unless otherwise provided in the new Act itself;

(ii) liability or right accrued under the repealed Act will not be affected and same will continue as if the repealing Act did not come into force;

(iii) procedure of investigation, trial, revision and appeal as well as a Page No.# 7/10 forum of remedy is part of procedural law, and the same will be applicable retrospectively unless otherwise provided in the new procedural law;

(iv) Litigants have no vested right in procedural law but has vested right in substantive law with accrued right or liability. The statute which not only changes the procedure but also creates new rights and liabilities, shall be construed to be prospective in nature unless otherwise provided.

15. From the above analysis it is clear that if any offence is committed prior to the enforcement of new criminal laws, then if the F.I.R. is registered after the enforcement of new criminal laws, then the same will be registered under the provision of I.P.C. in view of the Article 20 of the Constitution of India, but the procedure for the investigation will be as per the BNSS. Similarly, in case the offence is committed after the enforcement of new criminal laws and thereafter the F.I.R. is registered, then the investigation would be conducted as per the BNSS. However, in case the offence is committed prior to the enforcement of new criminal laws, and F.I.R. is also registered prior to enforcement of new criminal laws then the procedure of investigation would be as per the Cr.P.C. in view of Section 531(2)(a) of the BNSS. Therefore, the procedure of investigation provided by the circular dated 7.4.2024 of the Police Technical Services Headquarters, U.P. is absolutely correct.

16. On the basis of above analysis, this Court is also summarising the law regarding effect of repealing the IPC and Cr.P.C. by BNS and BNSS respectively and same is being mentioned as below:

(i) If an FIR is registered on or after 1.7.2024 for the offence committed prior to 1.7.2024, then FIR would be registered under the provisions of IPC but the investigation will continue as per BNSS.

(ii) In the pending investigation on 01.07.2024 (on the date of commencement of New Criminal Laws), investigation will continue as per the Cr.P.C. till the cognizance is taken on the police report and if any direction is made for further investigation by the competent Court then same will continue as per the Cr.P.C.;

(`iii) The cognizance on the pending investigation on or after 01.07.2024 would be taken as per the BNSS and all the subsequent proceeding including inquiry, trial or appeal would be conducted as per the procedure of BNSS.

(iv) Section 531(2)(a) of BNSS saved only pending investigation, trial, appeal, application and enquiry, therefore, if any trial, appeal, revision or application is commenced after 01.07.2024, the same will be proceeded as per the procedure of BNSS.

(V) The pending trial on 01.07.2024, if concluded on or after 01.07.2024 then Page No.# 8/10 appeal or revision against the judgement passed in such a trial will be as per the BNSS. However, if any application is filed in appeal, which was pending on 01.07.2024 then the procedure of Cr.P.C. will apply.

(vi) If the criminal proceeding or chargesheet is challenged before the High Court on or after 01.07.2024, where the investigation was conducted as per Cr.P.C. then same will be filed u/s 528 of BNSS not u/s 482 Cr.P.C."

8. Accordingly, Mr. Haloi submitted that further custodial interrogation of the present accused/petitioner may be necessary in the interest of investigation and therefore he raised objection in allowing the present accused/petitioner on bail.

9. After hearing the entire submissions made by the learned counsels for both sides, it is seen that the case is admittedly registered after the implementation of the BNS, 2023. However, it cannot be denied that the offence was continued since 2023. More so, from the materials available in the Case Diary, it is seen that there are some implications and materials to constitute the offence under Section 409 IPC against the present accused/ petitioner. But, in the same time, it cannot be denied that the petitioner is behind the bar for last 86 days and no prayer for custodial interrogation was made by the prosecution after his completion of the police remand and since then, he is in judicial custody. Further, on perusal of the Case Diary, it is seen that there are sufficient progress in the investigation, but the probability of filing the Charge-Sheet within 2-3 days or within the stipulated period of time is very less. The Hon'ble Supreme Court in the case of Dataram Singh Vs. State of Uttar Pradesh [(2018) 3 SCC 22] has held that even if grant or refusal of bail is entirely upon discretion of Judge, it must be exercised in a judicious manner and in a humane way as such remanding hampers dignity of accused howsoever poor he Page No.# 9/10 might be. Thus, without going by the detail of the merit and considering the long period of detention, it can be held that the Investigating Authority got ample opportunity to interrogate the accused/ petitioner keeping him in custody.

10. In the result, the bail application stands allowed. Accordingly, it is provided that on furnishing a bond of Rs. 1,00,000/- (Rupees one lakh) only with 2 (two) suitable sureties of like amount to the satisfaction of the learned Special Judge, CBI, Guwahati, the accused/petitioner, namely, Rafikul Islam @ Rafiqul Islam, be enlarged on bail, subject to the following conditions:

- (i) that the petitioner shall fully co-operate in the further investigation of the case if his co-operation is needed by the Investigating Agency and shall also make himself available for interrogation by the Investigating Officer as and when required;
- (ii) that the petitioner shall submit his passports, if any, to the Trial Court;
- (iii) that the 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 to the Court or to any police officer;
- (iv) that the petitioner shall not leave the jurisdiction of the learned Special Judge, CBI, Guwahati, without prior permission.

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11. In terms of above, this bail application stands disposed of.

JUDGE Comparing Assistant