

Page No.# 1/ vs The State Of Assam on 26 November, 2024

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GAHC010216332024

2024:GAU-AS:11677

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

Case No. : Bail Appln./3152/2024

HEMEN RAVA
S/O BHOGESWAR RAVA, R/O VILL- BANDARMARI, P.S.-TEZPUR, DIST-
SONITPUR, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. A M BORA, MR. V A CHOWDHURY, MRS. A GAYAN, MS. C
CHOUDHURY

Advocate for the Respondent : PP, ASSAM, SC, CBI

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 26.11.2024 Heard Mr. A. M. Bora, learned Senior Counsel assisted by Mr. V. A. Chowdhury, learned counsel for the petitioner. Also heard Mr. M. Haloi, learned Standing Counsel, CBI for respondent.

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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 Tezpur P.S. Case No. 533/2024,

under Sections 316(2)/318(4) of BNS read with Sections 21(1)/21(2)/21(3) of Banning of Regulated Deposit Schemes Act, 2019.

3. Mr. Bora, learned Senior Counsel for the petitioner, submitted that the petitioner was initially arrested in connection with Tezpur P.S. Case No. 533/2024, under Sections 316(2)/318(4) of BNS read with Sections 21(1)/21(2)/21(3) of Banning of Regulated Deposit Schemes Act, 2019 on the basis of the F.I.R. lodged by one Dinutpal Borah alleging inter alia that the present accused/petitioner is fraudulently operating a company, namely, Gini Capital of Burateteli, without following the guidelines of the Reserve Bank of India and fraudulently inducing the people to give high interest of money and misappropriated the money from different persons. Initially the case was registered by the Assam Police, but subsequently the State Government vide Notification No. eCF-552422/105-A, dated 09.10.2024, transferred 41 numbers of cases, including the present case, to CBI under the provision of Section 6 of Delhi Special Police Establishment Act, 1946 (hereinafter referred to as 'Act of 1946').

4. Mr. Bora, learned Senior Counsel for the petitioner, further submitted that vide Notification dated 11.10.2024, the Government of India, Ministry of Personnel Public Grievances and Pensions, as per provision of Section 5 (1) read with Section 6 of the above referred Act of 1946, extended the power and jurisdiction of the members of the Delhi Special police Establishment for Page No.# 3/11 investigation all those 41 numbers of cases notified by the Government of Assam vide Notification dated 09.10.2024. He further submitted that there is no dispute in regards to the Notification issued under Section 5(1) of the Act of 1946 whereby the investigation of 41 numbers of cases notified by the Government of Assam including the present case to investigate by CBI. But, during the pendency of the investigation and prior to the completion of the mandatory period of 60 days, the Investigating Agency added Section 316(5) of BNS only to extend the mandatory period of 90 days without any materials. Mr. Bora further submitted that after adding of Section 316(5) of BNS, the CBI moved an application before the learned Special Judge, CBI seeking police remand of the present accused/petitioner, but the said application was kept in abeyance by the learned Special Judge, CBI only on the ground that the production of the accused is necessary. But, surprisingly, during the pendency of the said petition before the learned Special Judge, CBI, the CBI had moved another application before the learned Sessions Judge, Sonitpur, Tezpur for remand of the accused/petitioner and the learned Sessions Judge, Sonitpur, Tezpur vide order dated 02.11.2024 itself had allowed the prayer for remand of the accused/petitioner for 3 (three) days without having any jurisdiction.

5. Further, Mr. Bora submitted that vide Notification of this Court dated 30.10.2024, the designated Courts of Special Judge, CBI has been only given the power exclusively to deal with the cases investigated and registered by the CBI under the Banning of Unregulated Deposit Schemes Act, 2019 and the jurisdiction is extended across the State of Assam for taking up the trial of such cases. But, in spite of said Notification, the learned District and Sessions Judge, Sonitpur, Tezpur had passed the order for remand without having any Page No.# 4/11 jurisdiction.

6. Mr. Bora further stressed on the point of non-compliance of provision of Section 3 of the Act of 1946, which reads as under:

"Offences to be investigated by Special Police Establishment - The Central Government may, by notification in the Official Gazette, specify the offences or classes of offences which are to be investigated by the Delhi Special Police Establishment."

7. Mr. Bora further submitted that there was a Notification, which is placed before this Court by the CBI in regards to Section 3 of the Act of 1946, which was issued for publication on 20.10.2024/26.10.2024, but as per the Official Gazette, the date of publication of Gazetted Notification was on 06.11.2024 vide Notification No. CG-DL-W-06112024-258478 and the signatory was one Gorakha Nath Yadava, who digitally signed the said Notification on 06.11.2022. Mr. Bora also furnished the copy of the said Notification showing the digital signature of said Gorakha Nath Yadava by annexing the same along with the points submitted before this Court.

8. Mr. Bora further submitted that as per Section 8 of I.T. Act, the date of publication of any Gazetted Notification shall be deemed to the date of Gazette which was first published in any form.

9. Section 8 of the I.T. Act reads as under:

"8. Publication of rule, regulation, etc., in Electronic Gazette.--Where any law provides that any rule, regulation, order, bye-law, notification or any other matter shall be Page No.# 5/11 published in the Official Gazette, then, such requirement shall be deemed to have been satisfied if such rule, regulation, order, bye-law, notification or any other matter is published in the Official Gazette or Electronic Gazette:Provided that where any rule, regulation, order, by-law, notification or any other matter is published in the Official Gazette or Electronic Gazette, the date of publication shall be deemed to be the date of the Gazette which was first published in any form."

10. Mr. Bora further submitted that the Hon'ble Apex Court in the case of Union of India & Ors. Vs. Ganesh Das Bhojraj, reported vide (2000) 9 SCC 461, has held that the notification will take effect only when it is published through the customarily recognized Official Gazette. More so, as per Section 2(P) of BNSS also, the "notification" means a notification published in the Official Gazette. Accordingly, Mr. Bora submitted that the date of publication of the notification in the Official Gazette will only be considered as the date of said notification. He, therefore, submitted that even without going into the merit of the case, the accused/petitioner is entitled for bail on the basis of those technical issues which were not complied with.

11. Mr. Bora further submitted that as on today, the accused/ petitioner is behind the bar for last 84 days and considering his length of detention, he may be released on bail. The petitioner, being the permanent resident of his addressed locality, there is no chance of absconding if he is allowed to go on bail. Rather, he will co-operate in the investigation of the case as and when his co-operation will be needed.

12. Mr. Bora also relied on another decision of Hon'ble Supreme Court passed in Kanwal Tanuj Vs. State of Bihar & Ors., reported in (2020) 20 SCC 531, and further emphasized on paragraph 20 thereof, which reads as under:

Page No.# 6/11 "20. This Court in M. Balakrishna Reddy Vs. CBI, (2008) 2 SCC (Cri) 391 expounded the purport of Sections 3, 5 and 6 of the 1946 Act and observed in paragraph 19 as under:

"19. Plain reading of the above provisions goes to show that for exercise of jurisdiction by CBI in a State (other than Union Territory or Railway area), consent of the State Government is necessary. In other words, before the provisions of the Delhi Act are invoked to exercise power and jurisdiction by Special Police Establishment in any State, the following conditions must be fulfilled:

(i) A notification must be issued by the Central Government specifying the offences to be investigated by Delhi Special Police Establishment (Section 3);

(ii) An order must be passed by the Central Government extending the powers and jurisdiction of Delhi Special Police Establishment to any State in respect of the offences specified under Section 3 (Section 5); and

(iii) Consent of the State Government must be obtained for the exercise of powers by Delhi Special Police Establishment in the State (Section 6)."

13. On the other hand, Mr. Haloi, learned Standing Counsel, CBI has submitted that it is a fact that on 02.11.2024, one petition was moved before the learned Special Judge, CBI seeking remand of the present accused/ petitioner. But, as the record was not available before the learned Special Judge, CBI and the accused also could not be produced, the petition could not be entertained and hence, before the expiry of the 60/90 days, the CBI moved an application before the learned District and Sessions Judge, Sonitpur, Tezpur and on the prayer made by the CBI, the order of remand was accordingly passed with a direction to produce the accused and the record before the learned Special Judge, CBI after completion of the period of remand. Accordingly, on 04.11.2024, the accused, along with records, were produced before the learned Special Judge, CBI and thereafter the accused/petitioner was sent for judicial remand. Thus, nothing illegality or irregularity has been committed by the learned Sessions Judge, Sonitpur, Tezpur by remanding the accused/petitioner for 3 (three) days as the record as well as the petitioner was in custody of the said learned Page No.# 7/11 Sessions Judge, Sonitpur, Tezpur. More so, he submitted that as per Notification dated 21.01.2021 of the Government of Assam, all the District and Sessions Judge/Addl. Session Judge are designated/ authorized to take up the matters under the Banning of Unregulated Deposit Scheme Act, 2019. Thus, no irregularity has been committed by the learned District and Sessions Judge, Sonitpur, Tezpur while passing the order for remand as the order is passed in compliance of provision of Section 187 of BNSS. More so, at the relevant point of time, the accused was not in custody of the learned Special Judge, CBI and was also not under the custody of CBI and accordingly the remand order was passed by the learned Sessions Judge, Sonitpur, Tezpur.

14. Mr. Haloi further submitted that on 16.07.2024 also, there was a Notification No. S.O. 2790(E) wherein as per Clause (f), it was provided that rules, regulations, order or notification made under any Act, Ordinance or Regulation for time being in force, such reference shall respectively be read as the reference of the BNS, 2023 and BNSS, 2023 or BSA, 2023 and the corresponding provisions of such law shall be construed accordingly. Thus, prior to Notification dated 27.10.2024, there was already a Notification whereby the power was given to CBI to investigate the matter.

15. Mr. Haloi further submitted that the petitioner has not challenged the order dated 02.11.2024 for remanding the accused/petitioner to CBI neither in the bail application nor it has been challenged by filing separate application, though at the time of hearing of this case, the issue was raised by the petitioner side.

16. In regards to merit of the case, it is submitted by Mr. Haloi that an amount Page No.# 8/11 of Rs. 24 Crores was misappropriated by the present accused/petitioner and the money was laying in his personal account in various bank accounts and all the amounts are being freezed during the investigation. He further submitted that the offence is of very grave in nature which an economic offence and hence it has to be treated as an offence class apart. He further submitted that the investigation is still under progress and hence, considering the nature and gravity of the offence, the bail prayer of the present accused/petitioner may be rejected at this stage.

17. After hearing the submissions made by the learned counsels for both sides, I have perused the case record and the annexures filed along with the petition and also perused the written argument filed by the CBI along with some annexures.

18. It is an admitted fact that the order of remand was passed by the learned Sessions Judge, Sonitpur, Tezpur on 02.11.2024 when the another petition for remand of the accused/petitioner was kept in abeyance/pending before the learned Special Judge, CBI. It is also an admitted fact that vide Notification dated 30.10.2024, the designated Courts of Special Judge, CBI has been only given the power exclusively to deal with the cases investigated and registered by the CBI under the Banning of Unregulated Deposit Schemes Act, 2019 and the jurisdiction is extended across the State of Assam for taking up the trial of such cases. However, under Section 187 of BNSS, the learned District and Sessions Judge, Sonitpur, Tezpur had the jurisdiction to remand the accused/petitioner while the investigation was carried out by the Assam Police. The CBI had taken the plea that as the accused as well as the records were Page No.# 9/11 laying before the learned District and Sessions Judge, Sonitpur, Tezpur, they had to move an application before the learned District and Sessions Judge, Sonitpur, Tezpur as it was not entertained by the learned Special Judge, CBI due to non- availability of records and the accused person. But, from the orders passed by the learned Special Judge, CBI in Case No. RC 017/2024/ E0016 and the order passed in GR Case No. 1345/2024, it reveals that the order of remand was passed by the learned Sessions Judge, Sonitpur, Tezpur when the petition for remand was kept in abeyance by the learned Special Judge, CBI. However, there is no dispute in regards to the power vested to the CBI for investigation and the Section 5(1) & Section 6 of the Act of 1946.

19. Coming to the point of Section 3 of the Act of 1946, it is seen that the Notification was issued on 26.10.2024, but it was admittedly notified in Official Gazette only on 06.11.2024 wherein the digital signature of one Gorakha Nath Yadava is also found available in the annexures filed by the petitioner. But, in the same time, it also cannot be denied that the power of investigation was entrusted to the CBI by complying the proper provision of law.

20. It is also a fact that the allegations which are being brought against the present accused/petitioner are of economic offence wherein the misappropriation of amount of Rs. 24 Crores is being brought against the present accused/petitioner. But, in the same time, it also cannot be denied that the accused/ petitioner is already in custody for last 84 days. Further, considering the materials in the records, it is also seen that the probability of furnishing the Charge-Sheet within the stipulated period of time may not be possible for the Investigating Agency and hence, considering the long period of Page No.# 10/11 detention, it can be held that the Investigating Authority got ample opportunity to interrogate the accused/petitioner keeping him in custody and therefore, I find that further custodial interrogation of the present accused/ petitioner may not be necessary for the interest of investigation.

21. In view of above, I hereby allow the present bail application. 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, Hemen Rava, 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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22. In terms of above, this bail application stands disposed of.

JUDGE Comparing Assistant