

Page No.# 1/ vs Central Bureau Of Investigation on 29 November, 2024

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GAHC010236352024

2024:GAU-AS:11974

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

Case No. : Bail Appln./3492/2024

SANKAR SAHA
S/O BABUL SAHA,
R/O NEPALI PATTI, BYE LANE NO.2, P.O. AND P.S. TEZPUR, DISTRICT
SONITPUR, ASSAM

VERSUS

CENTRAL BUREAU OF INVESTIGATION,
REPRESENTED BY THE SC, CBI

Advocate for the Petitioner : MR. N J DUTTA, MR A BASUMATARY

Advocate for the Respondent : SC, CBI,

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER

Date : 29.11.2024 Heard Mr. N. J. Dutta, learned counsel for the petitioner. Also heard Mr. M. Haloi, learned Special Public Prosecutor, CBI for the 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 CBI Case No. RCo172024E0016 in connection with Tezpur P.S. Case No. 533/2024, registered under Sections 316(2)/318(4) of BNS

read with Sections 21(1)/21(2)/21(3) of the Banning of Unregistered Deposit Schemes Act, 2019 and added Section 409 BNS, 2023.

3. It is submitted by Mr. Dutta, learned counsel for the petitioner, 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 on 12.03.2024 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. Dutta, learned 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 Page No.# 3/11 jurisdiction of the members of the Delhi Special police Establishment for 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. Dutta 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. Dutta 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, Page No.# 4/11 Sonitpur, Tezpur had passed the order for remand without having any jurisdiction.

6. Mr. Dutta 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. Dutta 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. Dutta 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. Dutta 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 Page No.# 5/11 that any rule, regulation, order, bye-law, notification or any other matter shall be 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. Dutta 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. Dutta 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. Dutta further submitted that the present accused/ petitioner was simply working as a Manager under the company of the co-accused- Hemen Rabha and it is a fact that he only stood as a witness in some of the agreements made by the company. He further submitted that the co-accused- Hemen Rabha had 2 (two) companies wherein he was working as a Managing Director and the present accused/petitioner was only working as a Manager in one company, namely, SMC Institute, to guide the investors in making investment through the Gini Capital under its license and therefore, his limited function was to act as a broker between Gini Capital and the interested investors who are

willing to Page No.# 6/11 make investment. The said SMC Institute has no capacity to receive money from the investors because it is only a trading and brokerage firm and the company wherein he is working is also owned by co-accused- Hemen Rabha. He is simply working as an employee in the said firm and was also being paid remuneration on the monthly basis. His duty was only to look after the administration of the firm and he has no idea in respect of the dealing of the financial transactions done by the firm. Apart from that, there are other 4 (four) persons who are also employee in the said firm and all of them were working under the Managing Director, namely, Hemen Rabha. The present accused/petitioner has no criminal antecedent whatsoever and he is never involved in any criminal or any unlawful activities till date. He had applied for a job of Branch Manager in the said SMC Firm only on the bona fide belief that the same would be a firm like any other firm lawfully established.

12. Mr. Dutta further submitted that the co-accused- Hemen Rabha is already enlarged on bail by this Court vide order dated 26.11.2024 and considering his application on the same footing and also on the ground of parity, the present accused/petitioner may also be released on bail. The accused/petitioner is behind the bar for last 62 days and hence, the I.O. got ample opportunity to interrogate him keeping him in custody and hence, further custodial interrogation may not be necessary in the interest of investigation. He is a permanent resident of his addressed locality and 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.

13. On the other hand, Mr. Haloi, learned Standing Counsel, CBI has submitted Page No.# 7/11 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 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 Page No.# 8/11 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 the merit of the case, Mr. Haloi further submitted that the present accused/petitioner is the person who induced the other persons to invest money in the said companies and he also stood as a witness in all the agreement and with the conspiracy of co-accused- Hemen Rabha, he used to collected money from the persons who invested money in those companies. He further submitted that the ground of parity cannot be considered here in this case as the co-accused was released on bail only considering his length of detention. He also submitted that huge amount of money are being misappropriated by the present accused/petitioner with the conspiracy of the other co-accused and the offence is of very grave in nature which is of economic offence and hence, it should be treated as an offence class apart. He, accordingly, submitted that the investigation is still under progress and hence, considering the gravity of the offence, the bail petition for the present Page No.# 9/11 accused/petitioner may be rejected at this stage.

17. Mr. Haloi further submitted that Section 409 IPC will also be applicable for the present accused/petitioner as he signed as a witness in all the agreements and also induced the person to invest money in the said company in conspiracy with the other co-accused. Accordingly, he raised objection and submitted that the bail petition for the present petitioner may not be considered at this stage.

18. 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.

19. 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 laying before the learned District and Sessions Judge, Sonitpur, Tezpur, they had to move an application before the learned District and Sessions Judge, Sonitpur, Page No.#

10/11 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.

20. 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.

21. It is also a fact that the allegations which are being brought against the present accused/petitioner are of economic offence wherein the allegation of misappropriation of huge amount of money is being brought against him. From the materials available in the Case Diary, it is also seen that the present accused/petitioner induced lots of persons to invest money in the company and he also introduced himself as a Manager of the company and thus, in conspiracy with the co-accused- Hemen Rabha, he induced the persons to invest money in the name of the unregistered company. Further it is seen that he also stood as a witness in the agreements through which the people invested money in the said company. The case is still under investigation and only considering the ground Page No.# 11/11 of parity, the present accused/petitioner cannot be enlarged on bail as his custodial interrogation may be required for the interest of the investigation. More so, the co-accused was granted bail only considering the length of detention and hence, the ground of parity cannot be considered for the present accused/petitioner.

22. In view of the discussion made above, this Court is of the view that the present is not a fit case where the privilege of bail can be granted to the present accused/petitioner and therefore the same stands rejected.

23. The bail application stands disposed of in terms above.

JUDGE Comparing Assistant