

Jiten Deka vs The State Of Assam on 26 November, 2024

Author: Malasri Nandi

Bench: Malasri Nandi

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GAHC010208442024

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

Case No. : Bail Appln./3030/2024

JITEN DEKA
S/O- LATE HANGSHA RAM DEKA,
R/O- H.NO- 32, SANTIPUR, MAIN BRANCH ROAD, SANTIPUR, P.S-
BHARALUMUKH, GUWAHATI-09, DIST- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP ASSAM

Advocate for the Petitioner : MR. KAUSTUVMANI KAKOTI, MR. A BORPUZARI, MR. M
MORE, MR. P K SHARMA, MR. D DAS SR. ADV
Advocate for the Respondent : PP, ASSAM, SC, CBI

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

26.11.2024 Heard Mr. D. Das, learned senior counsel assisted by Mr. P. K. Sharma, learned counsel appearing for the accused petitioner as well as Mr. M. Haloi, learned standing counsel, CBI.

2. By filing this petition under Section 483 of the BNSS, 2023 the accused- petitioner, namely, Jiten Deka, has prayed for grant of bail in connection with Azara P.S. Case No.184/2024 under Sections 61(2)/316(2)/318(4) of BNS, 2023 read with Section 21(1)(2)(3)/23 of Banning of Unregulated Page No.# 2/12 Deposits Scheme Act, 2019.

3. The factual matrix leading to this bail application is that on 12.09.2024 one Kumuud Singh lodged an FIR before the officer in-charge of Azara PS, Guwahati stating inter alia that one Brahmaputra Sanchay and Biniog Cooperative Society Ltd. has been openly collecting deposits from

the general public promising attractive return on their investments. It was further alleged that the informant also invested in the scheme and on inquiry from his friends and family members it was revealed that the said institution was running a widespread scam, affecting many individuals who have lost their hard-earned money. It was further alleged that the informant came to know that more than thousand beneficiaries are awaiting their dues since last 2/3 years from the fraudulent institution and the amount which is due for payment by them would be more than five cores.

4. On receipt of the FIR, a case was registered vide Azara PS Case No.184/2024 under Section 61(2)/316(2)/318(4) BNS, 2023 read with Section 21(1)(2)(3)/23 of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred as BUDS Act).

5. Learned counsel for the petitioner has submitted that the petitioner is the Chairman of a co-operative Society namely, Brahmaputra Sanchay and Biniog Co-operative Society Ltd. which is registered under the Assam Co-operative Societies Act. On 23.03.2023 the Inaugural General Meeting of the society was held and the byelaws adopted by the society have also been registered in the office of the Assistant Register of the Co-operative Societies, Guwahati. The society has since been carrying on its activities as per the byelaws.

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6. It is further submitted that as per byelaws, the society would accept deposits from persons who are interested with the activities of the society and desirous of keeping their unutilized funds with the society. Each member would pay an admission fee of Rs.50/- only. As such, any person can become a member of the society by paying an admission fee of Rs.50/-. It is also pointed out that the society after its formation has been accepting deposits from its members as per the registered byelaws and at no point of time, the society have ever accepted deposits from non-members.

7. Learned counsel for the petitioner has also referred Section 63 and 70 of the Assam Co-operative Societies Act, which not only accepts deposit from its member but it can also accepts deposit from non-members. Learned counsel for the petitioner has also submitted that there was regular annual audit in the society including the financial transactions pertaining to acceptance of deposit and return thereafter to its members. The society has also paying the statutory audit fee as per Section 81 of the Act by way of treasury challan. The petitioner has collected all such documents from the society and annexed those documents with the record which reveal that there was no illegality or misappropriation of public money in the society.

8. Learned counsel for the petitioner has contended that the society have been operating certain regulated deposit scheme for its members and the society had never operated any unregulated deposit schemes as such Section 21/23 of BUDS Act are not attracted in the instant case.

9. Learned counsel for the petitioner further has argued that the accused petitioner, who is around 70 years of age, is suffering from various ailments for more than ten years and recently he has been diagnosed with an enlarged Page No.# 4/12 prostate and chronic kidney disease which demands intensive care with constant medical support. The petitioner had undergone two numbers of

surgeries of prostate, the recent one being done on 27.07.2024 at Fortis Hospital, New Delhi. Subsequently, after discharge, the petitioner started suffering from anemia and uncontrolled blood sugar and left renal disease for which he had to hospitalize few times for further treatment. Accordingly, learned counsel for the petitioner prays that the petitioner, who is an old aged person, suffering from various medical complications, is entitled to release on bail for health and medical grounds.

10. Another contention raised by the learned counsel for the petitioner is that his wife, aged about 63 years, has been suffering from Alzheimer's disease for the past thirteen years, with a progressive worsening of her condition over the last seven years. She has reached an advanced stage where other than the petitioner, she is unable to recognize the identity of others. The wife of the petitioner has become bed ridden and is entirely dependent on constant care. There is no one else available to provide her with the necessary daily care and medical attention.

11. According to learned counsel for the petitioner, the petitioner has been languishing in judicial custody for last 74 days since his arrest on 13.09.2024. The case was registered under Section 61(2)/316(2)/318(4) BNS, 2023 and read with Section 21/23 of BUDS Act wherein the mandatory period of custody is 60 days. Though, it is reflected from the statement of Investigating Agency, CBI that 409 IPC/316(5) of BNS was added by the CBI Court during investigation but by that time the mandatory period of 60 days was over. Hence, the petitioner is entitled for default/statutory bail.

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12. Learned counsel for the petitioner has also referred some provisions of BUDS Act i.e. Section 30 which requires reference to be made by competent authority i.e. in this Case by the Commission and Secretary, Finance Department, Government of Assam which is also missing in this case. Learned counsel has also submitted that Section 35 of the BUDS Act is to be applied along with other Laws for the time being in force. Hence, learned counsel for the petitioner has stated that as there are lots of irregularities found in investigation of the case and considering the length of detention of the accused petitioner, he may be enlarged on bail.

13. In response, learned standing counsel, CBI has vehemently opposed in granting bail to the petitioner by stating that this is an economic offence and large amount of public money is involved in the instant case. The accused petitioner in collusion with others had operating an unregulated deposit scheme, soliciting deposits from investors under the pretext of high return. It is also stated that the area of operation of the society as per certificate of registration includes Machkhowa, Bharalumukh, Kumarpara, Santipur, Sarab Bhatti and Dhiran Para. But the petitioner along with his associates had collected money from the people of Azara Area which is against the bylaws of the society. The accused petitioner entered into conspiracy with the co-accused and on the basis of such conspiracy, collected huge deposits from general public since last seven years by floating monthly deposit scheme with the promise of high rate of interest through their unit located at Azara through agents and did not return the same.

14. It is also submitted that the society collected deposits from general public who were not the members of the said society thereby violated the laid down Page No.# 6/12 guidelines of the Assam Co-operative Societies Act. As per record of Assistant Register of Co-operative society there is no unit of Brahmaputra Sanchay and Biniog Co-operative Society Ltd. at Azara. Moreover, they can collect deposit only from shareholders, not from general public. While doing so the accused petitioner acted as an unauthorized banker and therefore, during investigation Section 316(5) of BNS, 2023 has been invoked in the said case wherein the mandatory period of custody is 90 days.

15. Learned CBI counsel further stated that considering the gravity of the offence, the petitioner may not be enlarged on bail at this stage of investigation.

16. Keeping in view of the fact that the matter relates to bail application seeking bail on the ground of default/statutory bail, this Court is not going to discuss about the alleged inherent defects as pointed out by learned counsel for the petitioner like notification under Delhi Police Act or maintainability of BUDS Act etc.

17. Before going to discuss the point on issue regarding bail it is apt to mention the provision of Section 167 Cr.P.C.(corresponding to Section 187 of BNSS) which is reproduced as follows.

"..... 167. Procedure when investigation cannot be completed in twenty-four hours.

(1)Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer-in-charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to Page No.# 7/12 such Magistrate.

(2)The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction :Provided that -

(a)[the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding, - [Substituted by Act 45 of 1978, Section 13, for paragraph (a) (w.e.f. 18-12-1978).]

(i)ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii)sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

(b)[no Magistrate shall authorise detention of the accused in custody of the police under this Section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage.] [Substituted by the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), Section 14 (a) (i), for Cl. (b). Prior to its substitution, Cl (b) read as under.-[(b) no Magistrate shall authorise detention in any custody under this Section unless the accused is produced before him;].]

(c)no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the Page No.# 8/12 police.

[Explanation I - For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.] [Original Explanation numbered as Explanation II thereof and Explanation I inserted by Act 45 of 1978, Section 13 (w.e.f. 18-12-1978).] [Explanation II. - If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be:] [Substituted by the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), Section 14 (a) (ii), for Explanation II. Prior to its substitution, Explanation II read as under :-

[Explanation II. - If any question arises whether an accused persons was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention].] [Provided further that in case of woman under eighteen years of is, the detention shall be authorised to be in the custody of a remand home or recognized social institution.] [Inserted by the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), Section 14 (b).] [(2-A) Notwithstanding anything contained in sub-section or (1) sub- section (2), the officer-in-charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate, or Metropolitan Magistrate have been

conferred, a copy of the entry in the diary, hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make Page No.# 9/12 such order, and where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2) :

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer-in-charge of the police station or the police officer making the [investigation] [Inserted by Act 45 of 1978, Section 13 (w.e.f. 18-12-1978).], as the case may be.] (3)A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4)Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

(5)If in any case triable by a Magistrate as a summons case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interest of justice the continuation of the investigation beyond the period of six months is necessary.

(6)Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify."

18. On a bare look at the provision, as per Section 167(2) of Cr.P.C. if a person Page No.# 10/12 who was arrested and remanded to judicial custody is entitled to be released on bail if the investigation is not completed within the prescribed time period and the final report has not been filed.

19. In the case of Uday Mohanlal Acharaya vs. State of Maharashtra, reported in (2001) 5 SCC 453, the Hon'ble Supreme Court reiterated the legal proposition that on the expiry of the prescribed time period for investigation, an indefeasible right accrues in favour of the accused to be released on bail. Similar view was taken by the Hon'ble Supreme Court in the case of Sanjay Dutt vs. State of Maharashtra, reported in (1995) 0 Supreme (SC) 1028.

20. In the case of Saravanan vs. State represented by the inspector of police, reported in (2020) 6 Supreme 665, it was held that only requirement for getting default/ statutory bail u/s 167(2) Cr.PC is that accused is in jail for more than 60 or 90 days and within 60 or 90 days, investigation is not completed and no charge sheet is filed by 60 th or 90th day and accused applies for default bail and is prepared to furnish bail bond.

21. Having heard the learned counsel for the parties and on perusal of the case diary, it is not in dispute that the accused petitioner is apparently involved in large scale financial scam. It is also not in dispute that the accused petitioner has been languishing in judicial custody for last 74 days since his arrest on 13.09.2024. It is also an admitted fact that CBI has filed a petition to add Section 316(5) of BNS on 02.11.2024 and accordingly the Section 316(5) was added, prior to completion of mandatory period of 60 days. Hence, the question of default bail does not arise.

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22. However, as the petitioner is around 70 years of age, suffering from several ailments with recent operation of prostate and anemia and uncontrolled blood sugar and left renal disease and also considering the health issues of his wife, the interim bail is granted to the petitioner for one month i.e. up to 27.12.2024. He is directed to surrender before the learned Special Judge, CBI, Guwahati on 27.12.2024.

23. In the meantime, the CBI is directed to complete the investigation.

24. Accordingly, the accused/ petitioner is released on bail on furnishing a bond of Rs. 1,00,000/- (Rupees One Lakh) with two suitable sureties of like amount to the satisfaction of learned Special Judge, CBI, Guwahati, Assam, on the conditions that -

(i) The petitioner shall attend the concerned investigating agency as and when required till filing of charge sheet.

(ii) The petitioner shall submit his passports, if any, to the trial court.

(iii) 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 them from disclosing such facts to the court or to any police officer or tamper with the evidence of the case in any manner whatsoever.

(iv) The petitioner shall not commit any offence, while he is on bail.

In case of violation of any of the above conditions, the CBI court shall be empowered to consider the application for cancellation of bail, if any, filed and pass orders on the same, in accordance with law.

(v) Needless to mention, it would be well within the powers of the investigating agency to investigate the matter and if necessary, to effect recoveries on the information, if any, given by the petitioner, Page No.# 12/12 even while the petitioner is on bail, as laid down by the Hon'ble Supreme Court in the case of Sushila Agarwal (Supra).

25.List the matter on 03.01.2025.

JUDGE Comparing Assistant