

# Page No.# 1/14 vs Central Bureau Of Investigation on 26 November, 2024

**Author: Malasri Nandi**

**Bench: Malasri Nandi**

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GAHC010239962024

2024:GAU-AS:11683

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

Case No. : Bail Appln./3467/2024

SUBHANJYOTI KURMI  
S/O- KESHOB KURMI,  
R/O- QUARTER NO-205,LATABARI, P.S- BOKAKHAT, DIST-GOLAGHAT  
ASSAM

VERSUS

CENTRAL BUREAU OF INVESTIGATION  
REP BY LEARNED STANDING COUNSEL CUM SPECIAL PUBLIC  
PROSECUTOR, C.B.I.

Advocate for the Petitioner : TAWHID ALOM LASKAR, SAMIM RAHMAN,MR S A  
BARBHUYAN,MR. SURAJIT DAS,MR SARFRAZ NAWAZ,MR A W AMAN

Advocate for the Respondent : SC, CBI,

BEFORE  
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 26.11.2024 Heard Mr. S. Nawaz, learned counsel for the petitioner. Also heard Mr. M. Haloi, learned Standing counsel, CBI.

2. By filing this application u/s 483 of BNSS, 2023, the petitioner, Page No.# 2/14 Subhanjyoti Kurmi, has prayed for regular bail in connection with RC- 17/2024/CBI/EO-III u/s 316(2)/ 318(4) of BNS, 2023 read with section 21(1)/21(2)/21(3)/23 of Banning of Unregulated Deposit Schemes Act, 2019 (herein after referred as BUDS Act), with added sections 61(2)/ 238 of BNS and added Sections 409/420/120-B IPC, arising out of Dibrugarh P.S. Case No. 352/2024.

3. The FIR dated 02/09/2024 discloses that as reported by news channel through its face book page, a video surfaced showing Bishal Phukan, a businessman from Dibrugarh, allegedly involved in a financial scam in violation of RBI/ SEBI regulations. According to the report, accused Bishal Phukan lured individuals, entering into notarized agreements, promising high returns on investments and subsequently deposited their money into his personal demat account, contrary to SEBI guidelines.

4. In the meantime, several individuals associated with Percelia Pharmaceuticals Pvt. Ltd. and Percelia Consultancy where Bishal Phukan served as co-founder, Director and CEO, were issued notices and summons to appear before the investigating officer.

5. It is submitted by learned counsel for the petitioner that the connection of the petitioner to the matter arises through his association with Mr. Tapan @ Tarkik Bora, the owner of the company "Wedding Tales" where the petitioner served as a manager. The petitioner and said Tapan Bora had closed acquaintances for an extended period during which they jointly established Wedding Tales. At the time, the FIR was registered, the petitioner was actively working on a separate project in a remote area of Bokakhat and thereby was unaware of the registration of the alleged FIR and involvement of his employer Page No.# 3/14 Tapan Bora and his wife, Sumi Bora.

6. It is also the submission of learned counsel for the petitioner that after registration of the FIR, the said Tapan Bora and his wife visited the rented house of the petitioner at Guwahati, wherein his girlfriend was temporarily staying in his absence. They asked his girlfriend to hold two bags. Uninformed about the matter, his girlfriend kept the said bags in his rented house. Subsequently, mother of the petitioner allowed Tapan Bora and his wife to stay in their house at Dibrugarh on their request.

7. By that time, police were in search of Tapan Bora and his wife Sumi Bora in connection with financial scam relating to the prime accused Bishal Phukan. He asked Tapan Bora and his wife to leave his house and surrender before police. Subsequently, the petitioner surrendered before Dibrugarh police along with two bags containing jewellery of Sumi Bora and he was arrested on 15/09/2024.

8. Learned counsel for the accused/petitioner has further submitted that it is essential to recognize that this case has been registered under charges of fraud and criminal breach of trust, pursuant to sections 316 and 318 of the BNS, 2023, along with operating an unauthorized scheme under the

Banning of Unregulated Deposit Schemes Act. However, the petitioner is neither directly nor indirectly involved in any of these alleged offences as outlined in the Acts and their provisions. Moreover, he has no association with the prime accused, Bishal Phukan, as described in the FIR. He does not know Mr. Phukan personally, has never worked for any of his companies or on any personal assignments for him, and has only met Mr. Phukan briefly a few times at the wedding of his employer, Tapan Bora, also known as Tarkik Bora.

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9. The learned counsel for the accused/petitioner vehemently opposed the allegations against the petitioner, as stated in the forwarding report, of assisting Sumi Bora and Tapan Bora in tampering with evidence is entirely false and baseless. In reality, the petitioner voluntarily handed over the bags containing items left at his rented house in Guwahati, during his absence, directly to the investigating officer at the Dibrugarh Police Station. These items were then duly seized by the investigating officer.

10. The learned counsel for the accused/ petitioner has also contended that in this entire matter, the petitioner is more a victim than an accused. Due to his employment under Tapan Bora and his familial ties with Tapan Bora and his own family, he found himself somewhat constrained. However, once he realized that the police were searching for them, he acted responsibly and in full compliance with the law, cooperating with the investigating officer and appearing whenever and wherever required.

11. According to learned counsel for the petitioner, the accused/ petitioner has been languishing in judicial custody for last 71 days, since his arrest on 15/09/2024. When the alleged provision of section 409 IPC or section 316(5) of BNS were added, by that time the mandatory period of 60 days is over. The case is originally registered u/s 316(2)/ 318(4) of BNS and 21/23 of BUDS Act wherein the mandatory period is 60 days, as such the petitioner is entitled for default/statutory bail.

12. Another contention raised by learned counsel for the petitioner is that in the present case presence of the petitioner admittedly not procured before the CBI court either personally or through video conference at the time of extension of remand or adding the provision. Further admittedly, the Page No.# 5/14 information about the filing of petitions by the CBI counsel for adding such sections also not provided to the accused/ petitioner.

13. Learned counsel for the petitioner, has referred clause (b) of sub section 2 of section 167 Cr.PC, which lays down that no Magistrate shall authorize the detention of the accused in the custody of the police unless the accused is produced before him in person. It also provides that judicial custody can be extended on the production of the accused either in person or through the medium of electronic video linkage. Thus, the requirement of the law is that while extending the remand to judicial custody, the presence of the accused has to be procured either physically or virtually. This is the mandatory requirement of law, which is not done in this case. Hence, the learned counsel for the petitioner prays to release the accused/ petitioner on default/statutory bail.

In support of his submission, learned counsel has placed reliance on the following case laws -

a. (2021) 2 SCC 485 (M. Ravindran vs. Intelligence Officer DRI) b. (2023) 6 SCC 484 (Jigar @ Jimmy Pravinchandram Adatiya vs. State of Gujarat) c. (2017) 15 SCC 67 (Rakesh Kumar Paul vs. State of Assam) d. (1994) 4 SCC 602 (Hitendra Vishnu Thakur and others vs. State of Maharashtra and others)

14. In response, learned Standing counsel CBI, has vehemently opposed in Page No.# 6/14 granting bail to the petitioner by stating that it is an economic offence and large amount of public money is involved in the instant case.

15. It is also the submission of learned Standing counsel CBI that the maximum punishment u/s 409 IPC and section 316(5) of BNS is life imprisonment which provides for a mandatory period of 90 days of judicial custody. Section 409 IPC was added to the case on 30/10/2024, well before the completion of 60 days of the accused/ petitioner's arrest. Additionally, the learned special judge CBI, allowed the custody of the accused/petitioner on 30/10/2024 beyond 40 days and 60 days. This is applicable only in cases where the detention period is 90 days u/s 187(2) of BNSS.

16. The learned Standing counsel, CBI also submitted that the accused/petitioner had aided the co-accused person namely Tapan Bora and his wife Sumi Bora to escape from the process of law, hide the properties acquired, using the proceeds of misappropriation of victims/ investors' money. It is further submitted that granting bail to the petitioner/ accused at this stage of investigation would hamper the process of identification of the assets of the co-accused persons, acquired from the proceeds of misappropriation. There is strong suspicion that the accused/ petitioner has still kept hidden a part of moveable or immovable properties of the co-accused persons. Accordingly, regular bail is opposed.

17. Learned Standing counsel, CBI also pointed out that the accused petitioner did not challenge the order of the learned Special Judge, CBI, thereby acknowledging the legal position emanating from the invocation of section 409 IPC and now has no locus standi to oppose the same at this stage before the conclusion of the 90 days period.

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18. The learned Standing counsel CBI, has further pointed out that adding of Section 409 IPC is not wrong as the offence has been committed prior to the introduction of the BNSS, 2023 i.e., 01/07/2024 and it is a continuing offence. He also referred the Judgment of the Division Bench of this Court vide Criminal Ref. No. 1/2024, wherein it is stated by the Bench that -

".....Any pre-arrest or regular bail or Criminal petition, filed after 01/07/2024 in connection with an FIR registered prior to 01/07/2024 i.e., before coming into force of the BNSS, 2023, are liable to be filed, under the provisions of Sections 482, 483, and 528 of the BNSS, 2023 respectively."

19. 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 by helping the co-accused Tapan Borah and his wife Sumi Borah. The allegation against the petitioner is that he kept hidden the jewellery of Sumi Borah in his house and accordingly police seized the same. It is also not in dispute that the accused/ petitioner has been languishing in custody for last 71 days since his arrest on 15/09/2024. It is also an admitted fact that the CBI has filed a petition before the CBI court to add section 409 IPC and accordingly, the section 409 was added on 30/10/2024, prior to completion of his 60 days mandatory period. As it appears that FIR has been lodged on 02/09/2024 and the case was registered under the provisions of BNS, 2023 which was introduced since 01/07/2024. But the CBI has preferred to add section 409 IPC by filing a petition before the CBI court which has already been repealed by that time. There is no explanation in the petition filed by the CBI before the CBI court to add the repealed provision in the Page No.# 8/14 instant case instead of the similar provision of BNS under section 316(5). Subsequently, another petition was filed by the CBI before the trial court to add section 316(5) of BNS against the petitioner and which was added on 11/11/2024 and by that time the petitioner has completed 58 days in judicial custody.

20. Now the question comes whether the petitioner is entitled for default bail!

21. Before going to discuss the issue in question, it is apt to mention the provision of section 167 Cr.PC (corresponding to Section 187 of BNSS, 2023) 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 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 Page No.# 9/14 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

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(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 Page No.# 10/14 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 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 Page No.# 11/14 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 Page No.# 12/14 an order for further detention of the accused person has been made by a Magistrate competent to make 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 Page No.# 13/14 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."

22. On a bare look at the provision, as per section 167(2) of Cr.PC, if a person 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.

23. 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.

24. In the case of Saravanan vs. State represented by the inspector of police, reported in (2020) 6 Supreme 665, it was held that only Page No.# 14/14 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.

25. In the case in hand, admittedly, prior to completion of mandatory period of 60 days, section 316(5) of BNS was added, wherein the mandatory period of custody is 90 days. Hence, the question of default bail does not arise. Accordingly, prayer for bail is rejected. However, the petitioner is at liberty to approach before the CBI court seeking regular bail.

26. Bail application is disposed of accordingly.

JUDGE Comparing Assistant