

Albert Sinha vs The State Of Assam on 30 November, 2023

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GAHC010266322023

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

Case No. : Bail Appln./4315/2023

ALBERT SINHA
S/O LATE AMAR SINHA
PERMANENT RESIDENT OF H/NO. 55-A, KUSHAL NAGAR,
BAMUNIMAIDAM, P.O. BAMUNIMAIDAM, P.S. CHANDMARI, KAMRUP (M),
GUWAHATI, ASSAM-781021

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. D S SINGH

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
ORDER

30.11.2023 Heard Mr D S Singh, learned counsel for the petitioner, Shri Albert Sinha.

2. The petitioner has filed this application under Section 439 CrPC, with prayer for bail, as he is in jail since 16.09.2023, in connection with Cyber Police Station Case No. 8/2023, under Sections 120B/490/420/385/467/ 471/468/507 IPC, read with Sections 65/66/66B/66C/66D of the IT Act.

3. Heard Mr M Phukan, learned Public Prosecutor, Assam.

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4. The FIR unfolds that with reference to the GD Entry No. 200, dated 13.09.2023, information was received from a reliable source that some miscreants were involved in operating call centres across India and through the call centres they have been cheating gullible Indian and Foreign Nationals by impersonating as Tech Support Staff. Pop-ups are sent by impersonating legitimate customer

service representatives to deceive such individuals and defraud them by cheating them to procure payment from the individuals and also personal information of the individuals. Various false claims to create a sense of urgency or fear and trepidation was fraudulently instilled to coerce the individuals to part with valuable security and money by implying that a computer virus has infected and personal identifiable information are at risk as computer or social media account of such individuals have been hacked. Thereafter, the miscreants initiated contact through unsolicited phone calls claiming to be from a well-known company or organization such as bank, tech support, government agency, or even popular online service for their financial gain. The miscreants asked the victims to install remote desktop software to prevent accessibility to their computers for security of their personal information and security against malware. The miscreants consisting of a gang of scammers had associates and members across India for laundering the money obtained through these scams.

5. It is further alleged that on receipt of the source of information, the Investigating Officer (Inspector of Police, Crime Branch, Guwahati), along with his staff made an enquiry in the area under the Guwahati city and it was unearthed that the accused named in the FIR with other accomplices have illegally set up customer care centres/call centres as per information received at Bamunimaidam, Mono Motors building at Bamunimaidam, at VIP road opposite Trust Motors, Outspire Solutions at Zoo Road, above AG Medicare at Rajgarh Road, near Hotel D Agni Dip at ABC and few other places of Guwahati, which are operated to cheat Indian and Foreign Nationals by posing as Tech Support Staff. During enquiry, intel received was found to be true to its nature. The Page No.# 3/9 accused persons named in the FIR were found to be masterminds involved in the offence. It is further alleged that the accused persons named in the FIR and their associates had manipulated and forged electronic documents and used them as genuine documents for the purpose of cheating and they have been found to be actively operating the scam for a long time.

6. It is further alleged that the fraudulently procured funds have been laundered through unsolicited sources via unconventional methods, dark web services and crypto currencies for personal gain of the accused persons named in the FIR.

7. The learned counsel for the petitioner has submitted that the petitioner is not involved in the scam. The learned counsel for the petitioner has prayed for bail on the ground of parity as co-accused have been granted bail. No offence under Section 467 IPC has been made out against the petitioner, but Section 467 IPC has been incorporated with malafide to preclude the accused from being admitted to bail. Section 467 IPC expounds that-

467. Forgery of valuable security, will, etc.--Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with 4[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

8. It is submitted that the other sections under which the petitioner is alleged to have committed an offence, does not fall under the IPC, but the offence alleged falls under Sections 65/66/66B/66C/66D of the Information Technology Act, 2000 (the IT Act, for Page No.# 4/9 short) and all the offences are bailable in nature. The offences under the IPC registered against the present petitioner prescribes punishment only upto 10 years and the petitioner has been wrongfully confined in custody as he is behind bars since 16.09.2023. Except Section 467 of the IPC, it is submitted that Section 81 of the IT Act has an overriding effect. Section 81 of the IT Act reads as under:-

81. Act to have overriding effect.-The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

9. On the basis of his submissions, the petitioner has prayed for bail.

10. The learned Public Prosecutor has raised serious objection stating that the parity in relation to the present petitioner does not arise at all as the present petitioner is the prime accused and is an employee in such call centres indulging in such heinous activities. It cannot be held at this stage that no offence under Section 467 of the IPC has been made out against the present petitioner. The Case diary reveals cogent and incriminating materials against the present petitioner and he has siphoned off huge amount of money and some of the co-

accused are on foreign shores. Granting bail to the present petitioner will entail in adversely affecting the investigation as this is a case relating to cybercrime which can be committed from a remote area. Digital records can be easily manipulated from a remote area and granting him bail will be perilous as many individuals have already been cheated and the petitioner has benefitted through such nefarious activities. The learned Public Prosecutor has submitted to reject the bail petition as the import of the offence with which the petitioner is alleged, does not entitle him to bail.

11. It is also submitted that the call centres were opened on the basis of fake documents and fake identity proof.

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12. It is further submitted that several accused involved in this offence are evading arrest and some are even on foreign shores and absconding arrest. I have perused the seizure list. Several desktop computers and other relevant articles have been seized in connection with this case from various locations around the Guwahati city area. The petitioner is an employee and he is deeply involved in running fake call centres. Several vehicles, documents, tenancy agreements for hiring the premises were found to be fake, during investigation.

13. The learned Public Prosecutor has further submitted that although the petitioner has submitted that all the computers laptops and official digital records have been seized in connection with this

case, yet cybercrime cannot be prevented by seizure of official digital records. It has to be borne in mind that this offence is a cybercrime, which can also be committed from a remote area.

14. It is true that the petitioner, Shri Albert Sinha is a resident of Kushal Nagar, Bamunimaiudam, Kamrup (Metro), Guwahati. There are incriminating materials that the petitioner is an employee of illegal call centres or fake call centres at Guwahati, along with his other accomplices. One call centre is located at Rajgarh Road and the other near Mono Motors Building at Bamunimaidam. It is also submitted that money trail is yet to be ascertained due to the hurdle created by circulation of money through fake accounts, bit coins and by dark web.

15. I have considered the submissions at the Bar with circumspection.

16. It is submitted that the petitioner is booked under bailable offence as Section 81 of the IT Act has an overriding effect in relation to offences under Section IPC, except Section 467 of the IPC. It is also submitted that Section 467 of the IPC has been incorporated with malafide. It has been observed by a coordinate Bench of this Court vide order dated 08.11.2023 in Bail Application No. 4012/2023 that-

Page No.# 6/9 "4. It is also the submission of learned counsel for the petitioners that except the offence under Section 467 IPC, the mandatory period of other alleged offences are 60 days. Section 467 IPC is not attracted here in this case as because there is no allegation against the petitioners that they forged any document which purports to be a valuable security/will etc. In fact, police has failed to seize any article/document during investigation.

5. It is also submitted that the petitioners came to Guwahati to join as a trainee who had no knowledge about the alleged scam, if any. Considering the nature of offence as well as length of detention, petitioners may be enlarged on bail."

17. The learned Public Prosecutor has relied on the decision of Neeru Yadav -Vs- State of UP & Anr., reported in (2014) 16 SCC 508, wherein it has been held and observed that-

"17. Coming to the case at hand, it is found that when a stand was taken that the 2nd respondent was a history sheeter, it was imperative on the part of the High Court to scrutinize every aspect and not capriciously record that the 2nd respondent is entitled to be admitted to bail on the ground of parity. It can be stated with absolute certitude that it was not a case of parity and, therefore, the impugned order clearly exposes the non- application of mind. That apart, as a matter of fact it has been brought on record that the 2nd respondent has been charge sheeted in respect of number of other heinous offences. The High Court has failed to take note of the same. Therefore, the order has to pave the path of extinction, for its approval by this court would tantamount to travesty of justice, and accordingly we set it aside."

18. The learned Public Prosecutor has also relied on the decision of Hon'ble the Supreme Court in Tarun Kumar -Vs- Assistant Director Directorate of Enforcement, in SLP (Crl.) No. 9431 of 2023,

decided on 20.11.2023, where it has been held and Page No.# 7/9 observed that-

"18. The submission of learned Counsel Mr. Luthra to grant bail to the appellant on the ground that the other co-accused who were similarly situated as the appellant, have been granted bail, also cannot be accepted. It may be noted that parity is not the law. While applying the principle of parity, the Court is required to focus upon the role attached to the accused whose application is under consideration. It is not disputed in that the main accused Sh. Kewal Krishan Kumar, Managing Director of SBFL, and KMP of group companies and the other accused Devki Nandan Garg, owner/ operator/ controller of various shell companies were granted bail on the ground of infirmity and medical grounds. The co-accused Raman Bhuraria, who was the internal auditor of SBFL has been granted bail by the High Court, however the said order of High Court has been challenged by the respondent before this Court by filing being SLP (CrI.) No. 9047 of 2023 and the same is pending under consideration. In the instant case, the High Court in the impugned order while repelling the said submission made on behalf of the appellant, had distinguished the case of Raman Bhuraria and had observed that unlike Raman Bhuraria who was an internal auditor of SBFL (for a brief period statutory auditor of SBFL), the applicant was the Vice President of Purchases and as a Vice President, he was responsible for the day-to-day operations of the company. It was also observed that the appellant's role was made out from the financials, where direct loan funds have been siphoned off to the sister concerns of SBFL, where the appellant was either a shareholder or director. In any case, the order granting bail to Raman Bhuraria being under consideration before the coordinate bench of this Court, it would not be appropriate for us to make any observation with regard to the said order passed by the High Court.

19. It is axiomatic that the principle of parity is based on the guarantee of positive equality before law enshrined in Article 14 of the Page No.# 8/9 Constitution. However, if any illegality or irregularity has been committed in favour of any individual or a group of individuals, or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing similar wrong order. Article 14 is not meant to perpetuate the illegality or irregularity. If there has been a benefit or advantage conferred on one or a set of people by any authority or by the court, without legal basis or justification, other persons could not claim as a matter of right the benefit on the basis of such wrong decision."

19. The learned Public Prosecutor has prayed to dismiss the petition as the petitioner is involved in an organized crime and his network has tentacles spread even to remote locations and have duped citizens in foreign shores. It is also submitted that the statements of the witnesses under 161 CrPC, have incriminated the petitioner.

20. I have scrutinized the Case Diary. I have perused the statements of the witnesses under Section 161 CrPC.

21. Indeed, there are incriminating materials in the Case Diary against the petitioner. The learned counsel for the petitioner has submitted that the petitioner is booked under the IPC, but the sections of the IPC has an overriding effect as per Section 81 of the IT Act, 2000. The sections of the IPC in pari materia to the sections of the IT Act, under which the petitioner is booked will be governed solely by the IT Act and all the offences under which the petitioner is booked under the IT Act are bailable offences. The assiduous argument relating to Section 467 IPC cannot be considered at this juncture as investigation is still under progress.

22. Considering the nature of the offence and the fact that several fake call centres are involved in this case, investigation has progressed with a slow pace. At this juncture, it cannot be ascertained if the petitioner is not liable under Section 467 IPC. It cannot be presumed at this stage that, once the petitioner is granted bail, he will shift base and Page No.# 9/9 again repeat the offence from remote locations. The petitioner has pledged to abide by any bail conditions imposed upon him.

23. Considering all aspects and in view of my foregoing discussions, I deem it proper to enlarge the petitioner on bail under the following conditions:-

i) the petitioner is to be released on bail on his execution of a bond of Rs. 50,000/-, with two local solvent sureties of the like amount to the satisfaction of the jurisdictional Court, under the conditions that-

(a) the petitioner shall attend in accordance with the conditions of the bond,

(b) the petitioner shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) 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 or tamper with the evidence,

(d) the petitioner will not leave the country without prior written permission from the jurisdictional Court.

24. Bail Application stands disposed of.

25. Send back the Case Diary.

JUDGE Comparing Assistant