

Rafikul Islam vs The State Of Assam on 29 July, 2024

Author: Malasri Nandi

Bench: Malasri Nandi

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GAHC010145292024

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

Case No. : AB/1874/2024

RAFIKUL ISLAM
S/O LALCHAN ALI
VILL- KANDAPARA
P.O. KADANG
P.S. BARPETA,
DIST. BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. M ALI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 29.07.2024 Heard Mr. M.U. Mahmud, learned counsel for the petitioner. Also heard Mr. R.J. Baruah, learned Additional Public Prosecutor for the Page No.# 2/5 State.

2. By this petition filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the petitioner, namely, Rafikul Islam, has prayed for granting transit anticipatory bail, apprehending arrest in connection with Cyber Crime P.S. Crime No. 2838/2023 under Section 420 IPC and 66 (D) of I.T. Act.

3. Learned counsel for the petitioner has submitted that petitioner is a business man having stone crusher set up at Rani Area at Guwahati and deals with export of stones. For his business, he has been regularly paying GST by submitting return and moreover he is a regular income tax payer and he has been filing income tax return every year.

4. It is further submitted that the petitioner has a business account at ICICI bank, Bijaynagar branch, Kamrup being current account No. 272105000963 through which he used to do business transaction. On 19.12.2023, the petitioner received an e-mail from ICICI bank, Bijoyanagar Branch with an attachment containing statement of transaction for the period of 01.12.2023 to 19.12.2023, wherein he found that several illegal transactions have been committed through his business account since 15.12.2023 to which he was totally unaware. He understood that his account was hacked and thereafter he immediately sent an e-mail to the Branch Manager of ICICI Bank with a prayer to block his account. Accordingly, his bank account was blocked and thereafter, no transaction was carried out through the said bank account.

5. According to the learned counsel for the petitioner, the petitioner received a notice under 41(A) Cr.P.C. dated 24.06.2024 issued by the Page No.# 3/5 Police Inspector, Electronic City Police Station Bengaluru City, Karnataka in connection with Electronic City Police Station Crime No. 02/2024 under Section 66(C)/66(D) of I.T. Act and 420 IPC asking him to appear before the concerned investigating officer along with e-mail in connection with Cyber Crime P.S. Crime No. 2838/2023 under the same section of law. As the petitioner received the notice lately, he could not comply with the direction made to him, as such, he is apprehending arrest and filed this petition by praying for transit anticipatory bail which is permissible in law as per judgment of the Hon'ble Supreme Court vide Priya Indoria vs. State of Karnataka & Ors. reported in 2023 SCC online SC 1246.

6. On the other hand, learned Additional Public Prosecutor has opposed in granting transit pre-arrest bail to the petitioner as the allegation against the petitioner is serious in nature involving cyber crime.

7. Having heard the learned counsels for the parties and perusal of the documents, it emerges that the allegations against the petitioner involves offence under Section 420 IPC and Section 66(D) of I.T. Act. However, it's crucial to acknowledge that the petitioner denies the allegations and is willing to cooperate with the investigation. Granting transit anticipatory bail would enable the petitioner to appear before the concerned court in Telangana, demonstrating his commitment to the legal process and ensuring his presence during further proceedings.

8. The Apex Court in Priya Indoria vs. State of Karnataka and Others, reported in 2023 SCC Online SC 1246, has reiterated that -

"45. At the same time, we are also mindful of the fact that the Page No.# 4/5 accused cannot seek full-fledged anticipatory bail in a State where he is a resident when the F.I.R. has been registered in a different State. However, in view of what we have discussed above, he would be entitled to seek a transit anticipatory bail from the Court of Session or High Court in the State where he is a resident which necessarily has to be of a limited duration so as to seek regular anticipatory bail from the Court of competent jurisdiction. The need for such a provision is to secure the liberty of the individual concerned. Since anticipatory bail as well as transit anticipatory bail are intrinsically linked to personal liberty under Article 21 of the Constitution of India and since we have extended the concept of access to justice to such a situation and bearing in mind Article 14 thereof it would be necessary to give a constitutional imprimatur to the evolving provision of transit anticipatory bail. Otherwise, in a deserving case, there is likelihood of denial of personal liberty as well as access to justice for, by the time the person concerned approaches the Court of competent jurisdiction to seek anticipatory bail, it may well be too late as he may be arrested. Needless to say, the Court granting transit anticipatory bail would obviously examine the degree and seriousness of the apprehension expressed by the person who seeks transit anticipatory bail; while the object underlying exercise of such jurisdiction is to thwart arbitrary police action and to protect personal liberty besides providing immediate access to justice though within a limited conspectus."

9. In view of aforesaid legal position and upon consideration of the Page No.# 5/5 facts and circumstances, the submissions presented by the petitioner's counsel seeking transit anticipatory bail and on perusal of the relevant documents, there is compelling circumstance for grant of transit anticipatory bail which is accordingly allowed.

10. As a necessary corollary, in the event of his arrest, the arresting officer shall release him on bail upon furnishing a bail bond of 2,00,000/- (Rupees Two Lakh Only) with one solvent surety to the like amount, to the satisfaction of the arresting officer. It is made clear that the liberty granted herein shall expire after three weeks. Needless to mention that the transit anticipatory bail has been granted to facilitate the petitioner to appear before the court concerned in connection with Cyber Crime P.S. Crime No. 2838/2023, Cyberabad (Telengana) in accordance with law.

11. The petitioner is directed to cooperate fully with the investigating authorities and to appear before the concerned court within the stipulated three weeks period or to move for bail as the petitioner would find it necessary before a Court of competent jurisdiction in the interest of justice. Failure to comply with this order may result in the cancellation of the transit anticipatory bail.

12. In view of the above, the anticipatory bail application stands disposed of.

JUDGE Comparing Assistant