

GAHC010006222024



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

Case No. : AB/85/2024

MITALI SACHIN ADHIKARI
D/O- MR. SACHIN AADHIKARI, R/O- 1, RAJIV GANDHI BRIDGE NERUL,
NAVI MUMBAI- 400706, MAHARASHTRA, INDIA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY P.P., ASSAM

Advocate for the Petitioner : MR. R B PHOOKAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

O R D E R

09.01.2024

Heard Mr. R.B. Phookan, learned counsel for the applicant. And also heard Mr. Makhan Phukan, learned Public Prosecutor, Assam for the state respondent

and Mr. K.N. Choudhury, learned Senior Counsel, assisted by Ms. R. Kakati, learned counsel for the informant.

2. This application, under Section 438 of the Code of Criminal Procedure, 1973, is preferred by accused/applicant, namely, **Smti Mitali Sachin Adhikari**, who has been apprehending arrest in connection with **Fatasil Ambari P.S. Case No.220/2023, under Sections 120(B)/406/409/419/420/467/468/471/477-A/506/ 34 IPC**, for granting pre-arrest bail.

3. The above noted case has been registered on the basis of an FIR lodged by one Amit Tipnis, one of the Directors of Britt World Wide India Pvt. Ltd and BWW Global Pvt. Ltd. on 22.09.2023.

4. The essence of allegations made in the said FIR is that Sachin Adhikari, Tejaswini Sachin Adhikari and Shashikant Tadage, being the de facto promoters, financial controllers, and unlawful beneficiaries, holding the exclusive authority and financial management of Britt World Wide India Pvt. Ltd and BWW Global Pvt. Ltd. Company, with the ill intent of siphoning off the funds from BWW, have fabricated documents and issued bills of huge amounts for transferring funds from BWW to as many as nine Shell Companies/Firms of Sachin Adhikari, Tejaswini Sachin Adhikari such as Viztar International Pvt. Ltd., SMC Management Consultancy, genesis Business Solutions, Global Vistas Enterprises, Blue Ocean Services, Gray Matter, TSA Management Consultancy, Parth Consultancy Services and Sai Consultancy, and transferred directly 139 Crores. And further they have transferred a sum, amounting Rs.30 to 40 Crores by raising fabricated bills, over invoicing, booking false expenses and thereby defalcated the share of the informant to the tune of Rs.80 to 85 Crores and the present applicant is one of the ultimate beneficiary of the funds of BWW.

5. Mr. R.B. Phookan, the learned counsel for the applicant, submits that the entire transaction is a commercial transaction between two companies the accounts of the Companies was audited and GST were paid. Referring to an order of the Bombay High Court, dated 21.12.2023, in Anticipatory Bail Application No.3585 of 2023 of the present applicant, submits that vide aforesaid order Bombay High Court has categorically observed that the genesis of the case is commercial transaction between two parties and thereafter granted the applicant transit pre-arrest bail. Mr. Phukan further submits that the allegation against the applicant is false and fabricated and she no way involved in the offences alleged in the FIR and she is an employee of the company and except drawing salary she had no role in the offence. It is the further submission of Mr. Phukan that the applicant has appeared before the Investigating Officer and she has been co-operating with the investigating agency, and as such custodial interrogation of the applicant may not be required in the interest of investigation, and therefore, it is contended to allow the petition.

6. On the other hand, Mr. Makhan Phukan, the learned Addl. P.P., has produced the case diary before this court and vehemently opposed the petition. Mr. Phukan submits that the Investigating Officer has collected sufficient materials against the applicant and she is one of the beneficiaries of the transfer of funds of BWW Company and that her custodial interrogation is required in the investigation as she has not been co-operating with the investigation, though she had appeared before the I.O. on one occasion. Mr. Phukan further submits that this is an economic offence which forms a class apart from other offences and as such no pre-arrest bail can be granted to the accused of such offences as held by Hon'ble Supreme Court in the case of **P. Chidambaram vs.**

Directorate of Enforcement reported in **(2019) 9 SCC 24.** Mr. Phukan also submits that the offences are serious in nature and custodial interrogation is indispensable in the interest of investigation and therefore, it is contended to dismiss the petition.

7. On the other hand, Mr. K.N. Choudhury, the learned Senior Counsel, appearing for the informant, has opposed the petition. Mr. Choudhury submits that the applicant has not placed before this court the entire materials that have been enclosed with the FIR. Mr. Choudhury further submits that 139 crores of fund of BWW were transferred to the Shell companies, owned by Sachin Adhikari, Tejaswini Sachin Adhikari, who are her parents, and that Sachin Adhikari who has already been arrested by police and in jail hazoot. Mr. Choudhury also submits that though the Bombay High Court has observed that the transaction is of commercial transaction between the parties, yet the entire materials were not available before the Bombay High Court and that the informant despite being the Directors, holding 50% of the stake in the two Companies, became bankrupt because of the fraud/cheating committed by the accused persons, now he even could not make payment of salary of the employees of the company. Therefore, Mr. Choudhury contended to dismiss the petition.

8. Having heard the submission of learned Advocates for both sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary, produced before this Court by the learned Public Prosecutor with his assistance and also I have gone through the case law, referred by him.

9. It is to be noted here that the parameters, to be taken into consideration, while granting or refusing pre-arrest bail is well settled by Hon'ble Supreme

Court in catena of decisions. In the case of **Siddharam Satlingappa Mhetre vs. State of Maharashtra and others**, reported in **(2011) 1 SCC 694**, especially in para 112, following parameters are laid for consideration by the Court:

“122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) The possibility of the applicant to flee from justice;
- (iv) The possibility of the accused's likelihood to repeat similar or the other offences.
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- (vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- (ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal

course of events, the accused is entitled to an order of bail.”

10. In the instant case, the case diary indicates that though the I.O. has collected sufficient incriminating materials against in support of the allegations made in the FIR yet, the same appears to be against other accused persons who were the de facto promoters and financial controllers, of Britt World Wide India Pvt. Ltd. and BWW Global Pvt. Ltd. Company. There are materials in the case diary to suggest that Sachin Adhikari, Tejaswini Sachin Adhikari and Shashikant Tadage, are involved in transfer of funds generated by Britt World Wide India Pvt. Ltd. and BWW Global Pvt. Ltd. to their nine Shell Companies, such as Viztar International Pvt. Ltd., SMC Management Consultancy, Genesis Business Solutions, Global Vistas Enterprises, Blue Ocean Services, Gray Matter, TSA Management Consultancy, Parth Consultancy Services and Sai Consultancy owned by Sachin Adhikari, Tejaswini Sachin Adhikari. But, the materials so collected by the I.O. in the case diary, seems to be insufficient to indicate that the present applicant is also involved in the entire conspiracy. The only, allegation made in the FIR against the present applicant is that she is one of the beneficiary of said transfer of funds from Britt World Wide India Pvt. Ltd and BWW Global Pvt. Ltd. Company to the Shell Companies owns by her parents. However, it appears that she had received a sum of Rs.2,94,755/- and Rs.30,000/- being her salary.

11. While keeping the principles, laid down by the Hon'ble Supreme Court in the case of **Siddharam Satlingappa Mhetre** (supra) in mind, the facts and circumstances discussed herein above are examined, this court is left unimpressed by the submission of the learned Public Prosecutor that custodial interrogation of the applicant is required in the interest of investigation. Besides, she is a women and she is ready to co-operate with the Investigating Officer. In

that view of the matter, custodial interrogation of the applicant appears to be not necessary in the interest of investigation.

12. Accordingly, this court is inclined to allow this application. It is provided that in the event of arrest of the applicant, namely, **Smti Mitali Sachin Adhikari**, in connection with **Fatasil Ambari P.S. Case No.220/2023, under Sections 120(B)/406/409/419/420/467/468/471/477A/506/34 IPC**, she shall be enlarged on pre-arrest bail on executing a bond of Rs.1,00,000/- (Rupees One Lac) only with one surety of like amount to the satisfaction of the arresting authority. The above privilege is, however, subject to the following conditions:

- (i) that, the applicant shall make herself available for interrogation by the Investigating Officer as and when required;
- (ii) that, the applicant 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; and
- (iii) that, the applicant shall not leave the jurisdiction of the learned CJM, Kamrup (M) at Guwahati, without prior permission.

13. In terms of above, this anticipatory bail application stands disposed of. The Case Diary be sent back.

JUDGE

Comparing Assistant