

GAHC010016472024



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

Case No. : AB/205/2024

INDRAJIT BORA
S/O LATE BHUBAN CHANDRA BORA
THE THEN CHIEF ENGINEER,
GMC, GUWAHATI PRESENT ADDRESS- 1ST FLOOR, IN THE BUILDING OF
NABIN HATIMURAI, HATIGAON, BHETAPARA ROAD,
P.S. HATIGAON, DIST. KAMRUP (M)

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR G SAHU

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

ORDER

Date : 13-02-2024

Heard Mr. G. Sahu, learned counsel for the petitioner Shri Indrajit Bora.

2. The petitioner has filed this application under Section 438 of the Code of Criminal Procedure, 1973 (CrPC for short) read with Section 482 of the CrPC as

he is apprehending arrest in connection with ACB Police Station Case No. 69/2023 registered under Sections 13(2) read with Section 13(1) of the Prevention of Corruption Act, 1988 (the PC Act for short).

3. It is submitted on behalf of the petitioner that a notice dated 20.01.2024 was received from the Officer-In-Charge of Hatigaon Police Station, East Police district, Guwahati wherein it was stated that in connection with ACB Police Station Case No. 69/2023, the petitioner was to appear before the Superintendent of Police, Directorate of V & AC, Assam, Srimantapur, Guwahati on 24.01.2024 at about 11.00 AM for examination and recording his statement in connection with the aforementioned case. He was also directed to carry his PAN Card. The petitioner obtained a copy of the detailed report submitted by the Superintendent of Police, Directorate of V &AC to the Deputy Secretary to the Government of Assam wherein the Superintendent has given details of an earlier case being ACB Police Station Case No. 17/2023 under Section 7(a) of the PC Act registered against the petitioner and his subsequent arrest on 22.03.2023. The report further states that during search of the rented house of the petitioner at Bhetapara, uncounted cash of Rs.6,93,600/- (Rupees Six Lacs Ninety Three Thousand and Six Hundred) was recovered and was seized in presence of witnesses. It was further mentioned in the report that during investigation, it was learnt that 17 bank accounts on various banks, viz., HDFC, Jana Small Finance Bank, Kotak Mahindra Bank and State Bank of India was in the name of the petitioner and also in the name of his family members in addition to the salary account of the petitioner in the State Bank of India.

4. During search of the residential premises of the petitioner, it was unearthed that the petitioner owns luxury cars of Toyota and Audi make. Apart from luxury cars, the petitioner has various movable and immovable assets. As

the petitioner could not provide satisfactory explanation regarding the aforesaid source of income, the Government was approached vide Directorate Letter No. DGVA/R1/2023/2402 dated 11.04.2023 to accord approval to register a case against the petitioner for commission of offence under the PC Act. Accordingly, the Government vide letter dated 05.09.2023 accorded approval to register a case against the petitioner. On receipt of the approval from the Government, a regular case vide ACB Police Station Case No. 69/2023 was registered on 15.09.2023 on the basis of the FIR submitted by the Investigating Officer of ACB Police Station Case No. 17/2023.

5. On 23.01.2024, the petitioner through his son Sri Arnav Bora submitted an application before the Superintendent of Police, Directorate of V & AC stating therein that the petitioner was suffering from high blood pressure and as such, he was unable to appear before the Superintendent on 24.01.2023 as directed in the notice and prayed for time to appear on another date.

6. It is further submitted that the petitioner has also spent more than 30 (Thirty) days in custody in connection with the earlier ACB Police Station Case No. 17/2023, out of which the petitioner has spent 5 (Five) days in the police custody. It is further submitted by the petitioner that the police authorities in the guise of filing a new case against the petitioner is planning to arrest the petitioner only to take him back to custody and exercise both mental and physical torture upon him. It is further submitted that the petitioner has cooperated with the interrogation earlier and has provided all the information required by the investigating agency. One of the conditions when the petitioner was granted bail in connection with the earlier case, was that the petitioner was to appear before the Investigating Officer regularly and the petitioner has strictly adhered to the conditions.

7. It is submitted that again if the petitioner will be arrested in connection with this case, his family members will undergo immense agony. Through an additional affidavit it was further submitted on behalf of the petitioner that as mentioned in the original petition, one Ajit Borah lodged an FIR against the petitioner alleging inter-alia that on 13.03.2023, the informant, a businessman by profession, on being authorized by a contractor of GMCH to look after the construction works of a security shed and toilet block, approached the GMC office as the security money of the said work was of the year 2017 and was to be returned. The security money was to the tune of Rs.1,60,000/- (One Lac Sixty Thousand). It is alleged that the informant met the petitioner but he was demanded a sum of Rs.10,000/- (Rupees Ten Thousand) as gratification for releasing the security money and this was informed to one Md. Alimuddin Ahmed who asked the informant to submit an FIR. A trap proceeding was initiated and the petitioner was apprehended on 23.03.2023 while accepting an amount of Rs.6000/- (Rupees Six Thousand) from the informant and an FIR as ACB Police Station Case No. 17/2023 under Sections 7(a) of the PC Act was lodged and registered. The petitioner was forwarded to custody and he was in custody for 35 (Thirty Five) days and for 5 (Five) days he was in police custody.

8. It is submitted that the copies of the FIR of the present ACB Police Station Case No. 69/2023 was not available with the petitioner at the time of filing the bail petition and so, the petitioner has annexed the copies of the FIR pertaining to ACB Police Station Case No. 69/2023 registered under Sections 13(2) of the PC Act read with Section 13(1)(b) of the PC Act. It is further averred that this present case was investigated and initiated without proper sanction being accorded as mandated under Section 17 A of the PC Act. On the issue of sanction alone, the petitioner has prayed for anticipatory bail. The petitioner has

relied on decision of Hon'ble the Supreme Court in *Nara Chandrababu Naidu Vs. The State of Andhra Pradesh and another* reported in (2024) 0 Supreme (SC) 38, wherein it has been observed that:

"23. Otherwise, if I apply an interpretation of the expression "under this Act" to mean the statute as it exists at the time the enactment is invoked, the same phrase is invoked, the same might result in divesting the Special Judge of his power to proceed against the appellant, as at the time the appellant's case was brought to the Special Judge, the aforesaid two subsections stood deleted from Section 13 (1) of the 1988 Act.

I am making this observation because the Special Judge's jurisdiction is derived from Sections 3 and 4 of the 1988 Act. These provisions read:

"3. Power to appoint special Judges:

(1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:

(a) any offence punishable under this Act.

(b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

(2) A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973 (2 of 1974).

4. Cases triable by special Judges:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in subsection (1) of section 3 shall be tried by special Judges only.

(2) Every offence specified in sub-section (1) of section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special

Judge appointed for the case, or where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

(3) When trying any case, a special Judge may also try any offence, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the trial of an offence shall be held, as far as practicable, on day-to-day basis and an endeavour shall be made to ensure that the said trial is concluded within a period of two years:

Provided that where the trial is not concluded within the said period, the special Judge shall record the reasons for not having done so:

Provided further that the said period may be extended by such further period, for reasons to be recorded in writing but not exceeding six months at a time; so, however, that the said period together with such extended period shall not exceed ordinarily four years in aggregate."

"34. A question has also been raised by the appellant as to whether the Special Judge could have passed the remand order in the event the remand was asked for only in respect of alleged commission of the IPC offences. We are apprised in course of hearing that the appellant has been enlarged on bail. Hence, this question need not be addressed by me in this judgment. I, accordingly, dispose of this appeal with the following directions:

*(i) If an enquiry, inquiry or investigation is intended in respect of a public servant on the allegation of commission of offence under the 1988 Act after Section 17A thereof becomes operational, which is relatable to any recommendation made or decision taken, at least *prima facie*, in discharge of his official duty, previous approval of the authority postulated in subsection (a) or (b) or (c) of Section 17A of the 1988 Act shall have to be obtained. In absence of such previous approval, the action initiated under the 1988 Act shall be held illegal.*

(ii) The appellant cannot be proceeded against for offences under the Prevention of Corruption Act, 1988 as no previous approval of the appropriate authority has been obtained. This opinion of this Court, however, shall not foreclose the option of the concerned authority in seeking approval in terms of the aforesaid provision. In this case, liberty is preserved for the State to apply for such approval as contained in the said provision.

(iii) I decline to interfere with the remand order dated 10.09.2023 as I am of the view that the Special Judge had the jurisdiction to pass such order even if the offences under the 1988 Act could not be invoked at that stage. Lack of approval in terms of Section 17A would not have rendered the entire order of remand nonest.

(iv) The appellant, however, could be proceeded against before the Special Judge for allegations of commission of offences under the Indian Penal Code, 1860 for which also he has been implicated.”

9. In addition, it is also submitted that no new allegation has been leveled against the preset petitioner. On the basis of the same allegations, a second FIR has been lodged against the petitioner. The right to personal liberty of the petitioner cannot be curtailed by initiating a slew of cases and lodging FIRs ceaselessly against the petitioner. The petitioner has submitted that he will cooperate with the trial as he had earlier cooperated with the trial. He is a local resident and he is not a flight risk.

10. I have scrutinized the Case Diary.

11. The notification marked as Annexure-3 reveals that the petitioner is directed to appear before the SP, Directorate of V & AC, Assam, for examination and recording statement in connection with ACB Police Station Case No. 69/2023, under Sections 13(2), read with Section 13 (1) (b) of the PC Act. This case appears to be in continuation of the Trap Case vide ACB PS Case No. 17/2023, under Section 17 A of the PC Act. During investigation of this case, an amount of Rs. 6,93,600/- in cash, was recovered in the petitioner's house along with several bank cheque books, pass books of different bank accounts in the name of the petitioner and his family members. During the same investigation, it was unearthed that the petitioner's wife is the owner of expensive vehicles, like an Innova car and an

Audi car and the petitioner also has immovable assets in different locations. It was suspected that the petitioner was in possession of disproportionate assets and this present case is the case relating to the disproportionate assets, which is still at its preliminary stage.

12. It is submitted on behalf of the petitioner that the present case is nothing but an offshoot of the previous case. The petitioner's right to personal liberty will be curtailed if he is detained in prison in the case arising out of the same cause of action. Moreover, it is submitted that the second FIR is not tenable in law. The petitioner has, thus, prayed for bail as he has already been granted bail relating to the same offence. As a second FIR has been slammed against him, his right to personal liberty will be curtailed, if he is forwarded to custody again in connection with the same offence.

13. The learned Additional Public Prosecutor has raised serious objection against the bail petition, stating that the petitioner being a Government Servant has committed an economic offence. He has disproportionate assets and he is not entitled to bail as he has misused his office for wrongful gain by causing wrongful loss to the public exchequer. The learned Additional Public Prosecutor has submitted to reject the bail petition.

14. It is further submitted by the learned Additional Public Prosecutor that this case cannot be considered as an offshoot of the earlier case registered as ACB Case No. 17/2023. This case is relating to disproportionate assets, while the earlier case is a trap case.

15. I have heard both the sides.

16. The earlier FIR marked as Annexure-1 reveals that the petitioner

demanded Rs. 10,000/- as bribe from the informant to release the security money of Rs. 1,60,000/-, in favour of the informant. The informant who was not willing to pay the gratification lodged the FIR with the Police at ACB Police Station. The SP, Directorate of V & AC, then submitted a detailed and confidential report to the Deputy Secretary to the Government of Assam, Estt.BBranch (Confidential Cell) PWRD, relating the ACB PS Case No. 17/2023, describing the disproportionate assets and, thereafter, the investigation was initiated and the present FIR was registered being ACB Case No. 69/2023, which is relating to the disproportionate asset of the petitioner. The FIR itself reveals that the ACB PS Case No. 69/2023 was in reference to the ACB Case No. 17/2023, relating to the disproportionate assets, which have been questioned in connection ACB PS Case No. 17/2023, which has come under cloud.

17. Relating to the same offence of disproportionate assets, the petitioner was already forwarded to custody although in a different case. The petitioner had cooperated with the investigation. The learned counsel for the petitioner has submitted that the petitioner will cooperate with the investigation of this instant case.

18. The submission of the learned Additional Public Prosecutor that the statement of the petitioner under Section 161 CrPC, reveals that the petitioner has not cooperated with the investigation, cannot be taken as a ground to reject the bail petition. The petitioner is willing to abide by any stringent conditions, if imposed upon him and the petitioner is willing to cooperate with the investigation. As this is a subsequent FIR, relating to the same cause of action, the petitioner has prayed for anticipatory bail.

19. I have considered the submission that the investigation is relating to the same disproportionate assets, which was also a subject matter of the earlier case.

20. It is true that the earlier case was relating to gratification being demanded by the petitioner and the present case is relating to the disproportionate assets of the petitioner. The petitioner was already behind bars for 35 days.

21. It appears that custodial interrogation may not be required as the petitioner was subjected investigation in the earlier case.

22. The petitioner has made out a *prima facie* case for anticipatory bail.

23. The petitioner who was a Government Servant is not a flight risk.

24. I have considered the submission that the petitioner is willing to abide by any bail conditions, if imposed upon him.

25. Considering all aspects, the petition is allowed. In the event of his arrest, the petitioner shall be enlarged on bail of Rs. 50,000/- with a suitable surety of the like amount to the satisfaction of the arresting authority under the conditions that-

- i) the petitioner shall appear before IO within 10 days and cooperate with the investigation,
- ii) the petitioner shall not tamper with the evidence, and
- iii) the petitioner shall not leave the jurisdiction of the Court without prior permission, till completion of investigation and if trial is initiated, till the completion of trial.

26. On breach of any bail conditions, bail order shall stand cancelled.

Bail Application stands disposed of.

Send back the Case Diary.

JUDGE

Comparing Assistant