

GAHC010033272024



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

Case No. : Bail Appln./454/2024

MD. CHAMED ALI
S/O LATE BUJAN ALI
PERMANENT RESIDENT OF HOUSE NO. 14, LALMATI ROAD,
GANDHIBASTI
P.S. CHANDMARI,
DIST. KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 23.02.2024

Heard Mr. H.R.A. Choudhury, learned Senior counsel assisted by Mr. A.T. Sarkar, learned counsel for the petitioner. Also heard Mr. M. Phukan, learned Public Prosecutor for the State/respondent.

2. This bail application made under **Section 439 Cr.P.C.**, seeking bail by the accused-petitioner, namely, **Md. Chamed Ali**, in connection with **Vigilance P.S. case No. 09/2023**, registered under **Section 13(1)(b)/13(2) of the Prevention of Corruption Act, 1988**.

3. The prosecution case as unfolded in the ejahar on the basis of the complaint made by MLA of South Karimganj Constituency alleging that the present petitioner, the then Executive Engineer, PWD Road Division, Karimganj took a huge amount from the contractor for release of payment of their bills without execution of works as per plan and estimate. Some contractors are executing work till date and other works are still pending but they got full payment against their allotted works without execution. It is alleged that the present petitioner Md. Chamed Ali acquired huge property by illegal and corrupt means which is disproportionate to known source of his income.

4. As per order of Government of Assam, a preliminary enquiry was initiated and during the enquiry, it was found that the petitioner had joined as Assistant Engineer in PWD, Karimganj and retired from service in March, 2021 as an Executive Engineer. During investigation, it reveals that the petitioner, the then executive engineer was found possession of assets (movable and immovable) to the tune of Rs.96,73,885.87/-. He also purchased one flat from M/s Greenacres Real Estate Developer and Builder at Rs.30,00,000/- on 30.11.2021 after the check period. Thus, the petitioner possessed assets both movable and immovable to the tune of Rs.66,73,886/- during the check period i.e. from 01.01.2000 to 31.03.2021.

5. During investigation, it also revealed from the investigation that

during the check period i.e. from 01.01.2000 to 31.03.2021, the petitioner incurred income under different heads which was from his salary amounting to Rs.1,10,00,000/- and income from house & properties, maturity value of investment, maturity value of life insurance policies etc. approximately Rs.50,00,000/-. The total income of the petitioner found as Rs.1,60,00,000/-.

6. It was also alleged in the FIR that during the check period from 01.01.2000 to 31.03.2021, the present petitioner incurred expenditure under different heads which was worked out at Rs.2,76,66,666/-. The expenditure made by the petitioner relating to construction of houses, registration of vehicles, maintenance cost of vehicle, educational expenditures, telephone and electricity bills, premium paid against life insurance policies, expenditure incurred on registration of land etc. Thus the petitioner possessed disproportionate assets amounting to Rs.1,83,40,552/-.

7. It is submitted by the learned Senior counsel for the petitioner that the petitioner has been detained in custody since 18.01.2024. He has been retired from his service and he has never indulged himself in any criminal activities whatsoever at any point of time and the so-called allegation brought against the petitioner is totally false and baseless and fabricated one.

8. It is further submitted that the actual fact of the case is that the petitioner was transferred to Karimganj on 06.02.2020 as an Executive Engineer and he was performing his duties to the satisfaction of the departmental authorities. During that period, the petitioner cancelled the

work order of the brother of the then MLA of South Karimganj Constituency, as he could not complete his assigned work within the stipulated time enumerated in the respective notice inviting tender. Being aggrieved, the then MLA several times requested the petitioner to withdraw the cancellation order and allowed his brother to complete the balance work but the petitioner considering the greater interest of the society as well as urgent needs of the road in question, did not withdraw the cancellation order, rather assigned the work to another contractor to complete the same. As a result of which, the complaint was made against the petitioner by the then MLA with a view to harass him.

9. Learned Senior counsel for the petitioner has further contended that the petitioner had applied for Haj before the Government of India along with relevant document including his passport which is going to be held in the month of May, 2024 in Saudi Arabia and consequently, the original copy of passport has been kept by the authority for the purpose of obtaining visa. During the investigation of the case, the petitioner duly informed to the investigating officer but surprisingly, the said fact was neither taken into consideration nor brought to the notice of this Court rather shown the same as ground of arrest raising doubt about his availability during investigation or trial. Accordingly, the learned Senior counsel for the petitioner submits that the doubt shown by the investigating officer is totally baseless. Under such backdrop, the bail prayer of the petitioner may be considered for the interest of justice.

10. It is also submitted by the learned Senior counsel for the petitioner that as per direction of the Chief Minister's Special Vigilance Cell, Assam,

the petitioner disclosed his each and every assets both moveable and immovable properties within 15 days as per format supplied by the authority but the investigating officer without considering the material, arrested the petitioner. The learned Senior counsel for the petitioner further submits that the petitioner will cooperate with the investigation as and when required. As nothing to be remained in investigation on the part of the petitioner, further custodial interrogation is not at all required for the purpose of investigation of the case. As such petitioner may be released on bail in any condition imposed by this Court.

11. Per contra, Mr. Phukan, learned Public Prosecutor for the State submits that there is sufficient incriminating materials available in the case diary. The investigation is at the nascent stage and at this stage of investigation, allowing the petitioner to go on bail may hamper in the investigation of the case.

12. Learned Public Prosecutor has also pointed out the order of the Special judge by stating that one of the prime witnesses after giving her statement allowed to go by the investigating officer and thereafter she was called again but she refused to appear before the investigating officer by giving her further statement. Accordingly, learned Public Prosecutor has vehemently opposed in granting bail to the petitioner at this stage of the investigation.

13. I have considered the submission of learned counsel for the parties. Perused the case diary including the statement of the witnesses recorded under Section 161 Cr.P.C. and the documents available in the case diary.

14. The alleged offence pertains to disproportionate assets against actual income of the present petitioner. The documents available in the case diary shows that the petitioner had collected disproportionate assets which was not possible by a government servant to procure by spending money from his salary.

15. The economic crime of such scale and magnitude are carefully and meticulously planned and executed. It is well settled that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. While granting bail, the court has to keep in mind the nature of acquisition, magnitude and gravity of offence and nature of evidence in support of the acquisitions as held by the Hon'ble Supreme Court in the case of Y.S. Jaganmohan Reddy vs. CBI, reported in 2013 v. (7) SCC 439.

16. The present case involves a scam of huge magnitude involving money more than two crores of rupees. Trust has been breached in criminal conspiracy by the accused/petitioner which has resulted huge loss to the State. The money trail is yet to be completely discovered and therefore, at this stage, the accused/petitioner cannot be released on bail. Therefore, prayer for bail is **rejected**.

17. The bail application stands disposed of accordingly.

18. Return the case diary.

JUDGE

Comparing Assistant