

GAHC010053592024



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

Case No. : Bail Appln./739/2024

NIAJUL ISLAM TALUKDAR @ NIYAJUL ISLAM TALUKDAR
S/O ABDUL JALIL TALUKDAR,
RESIDENT OF VILLAGE NAHAR GAON, BURIGAON, PS DABOKA, DIST
HOJAI, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP ASSAM

Advocate for the Petitioner : MD A ISLAM
Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

30.04.2024

Heard Mr. A.K. Ahmed, learned counsel for the petitioner. Also heard Mr. M. Phukan, learned Public Prosecutor, Assam and Mr. M. More, learned counsel representing the informant.

2. By this petition under Section 439 Cr.P.C., the accused-petitioners, namely, **Niajul Islam Talukdar @ Niyajul Islam Talukdar**, has prayed for grant of bail in connection with **CID P.S. Case No.16/2023** under Sections

**120(B)/255/256 257/259/260/406/417/419/420/463/465/466/468
/471/472/474/506 IPC read with section 7(1) (2) State Emblem of
India (Prohibition of improper use) Act, 2005**

3. The brief fact of the case is that on 10/10/2023 an FIR has been lodged before the Superintendant of police, CID, Assam at Guwahati, by the M/s Sabharwal Trading India Pvt Ltd, a duly registered company through its authorized representative Mr. Kamal Sabharwal, stating inter alia that he is a business man dealing with trading of various goods like zipper fastener, slider fastener, polyester fabric and luggage related materials and accessories. Mr. Rajinder Sharma and Mohit Kalra are the business partners of the complainant. The allegation against the present petitioner is that the petitioner along with other accused persons induced the complainant and his associates that the work assigned to them was a government contract. They also actively participated with each other into entrapping them in an elaborate scheme of fraud cum forgery. As a result the complainant and their associates supplied huge consignment of goods. The petitioner and the other accused induced the complainant and his associates that the government of Assam was looking for supplier in bulk goods which includes school bags, blankets etc for a project overseen by the CM for the Welfare of the people in various districts of Assam. In the process the petitioner and the other accused forged seals and documents of the Assam government to give authenticity to the deception resulting in defrauding of the complainant with huge amount of money. One of the accused projected himself as a Assam government functionary and was entrusted by the CM office to execute Social Welfare projects. Ultimately it came to the knowledge of the complainant and his associates that the entire transaction was an elaborate scheme of fraud. Hence, the FIR was lodged to nab the culprits.

4. It was urged by the learned counsel for the petitioner that the petitioner has been languishing in judicial custody for last 89 days since his arrest on 21/01/2024. Charge sheet has been laid against the petitioner and two other accused having found the prima facie materials against them. The trial court also took cognizance of the offence and the trial is proceeding before the trial court. According to the learned counsel for the petitioner, as the charge sheet has been submitted there is no question of hampering in the investigation or tempering with the evidence of the witnesses.

5. It is also the submission of the learned counsel for the petitioner that the petitioner was working in the capacity of house keeper in the office of Rudra Sagar inn guest house under the prime accused Mr. Partha Bhardwaj and the said guest house belongs to Partha Bhardwaj and the petitioner had been receiving salary of Rs. 12,000/- per month. The petitioner opened two bank accounts in the name of Rudra Sagar Organic Firm and deposited the money which were collected by selling school bags and mosquito nets. It is further submitted that whatever illegality done by the present petitioner with the advice of the main accused Partha Bhardwaj, the petitioner was not aware of cheating, forgery, and impersonation of his employer who had been controlling and managing the bank account of the petitioner.

6. Learned counsel for the petitioner also has contended that the petitioner is a permanent resident of the state of Assam as such there is no chance of his absconding. It is also submitted that the bail was granted to the co-accused Pallabi Thakuria, whose offence is more serious than the present petitioner. Under the facts and circumstances of the case and considering the length of detention, learned counsel for the petitioner prays to release the petitioner on bail in any condition.

In support of his submission learned counsel has placed reliance on the following case law –

- a. CBI vs. Kapil Wadhawan and another reported in Crl. MC. 6544/2022.

7. In response, learned Public Prosecutor submits that the petitioner opened two fake business bank account with the help of prime accused Partha Bhardwaj and credited Rs. 183,045,181/- and debited Rs. 182,941,563/- from one bank and from another bank credited Rs. 67,500,000/- and debited Rs. 67,890,163/- in the name of Rudra Sagar Organic Firm and cheated the complainant and his associates.

8. Learned counsel for the informant Mr. More also has argued in the same tune by stating that the alleged offence relates to fraudulent transaction caused by the petitioner and other accused by way of fake seals and other documents as a result of which the informant sustained a huge loss. This is not a fit case to grant bail to the petitioner.

9. I have considered the submissions of the learned counsel for the parties. I have also perused the case diary and the relevant documents available thereon.

10. The core concept and philosophy of bail was discussed by the Hon'ble Supreme Court in **Vaman Narain Ghiya v. State of Rajasthan reported in AIR 2009 SC 1362**, wherein it was observed that:

“'Bail' remains an undefined term in CrPC. Nowhere else has the term been statutorily defined. Conceptually, it continues to be understood as a right for assertion of freedom against the State imposing restraints. Since the UN Declaration of Human Rights of 1948, to which India is a signatory, the concept of bail has found a place within the scope of human rights. The dictionary meaning of the expression 'bail' denotes a security for appearance of a prisoner for his release. Etymologically, the word is derived from an old French verb

'bailer' which means to 'give' or 'to deliver', although another view is that its derivation is from the Latin term 'baiulare', meaning 'to bear a burden'. Bail is a conditional liberty. Stroud's Judicial Dictionary (4th Edn., 1971) spells out certain other details. It states:

'... when a man is taken or arrested for felony, suspicion of felony, indicted of felony, or any such case, so that he is restrained of his liberty. And, being by law bailable, offered surety to those which have authority to bail him, which sureties are bound for him to the King's use in a certain sums of money, or body for body, that he shall appear before the justices of goal delivery at the next sessions, etc. Then upon the bonds of these sureties, as is aforesaid, he is bailed--that is to say, set at liberty until the day appointed for his appearance.' Bail may thus be regarded as a mechanism whereby the State evolves upon the community the function of securing the presence of the prisoners, and at the same time involves participation of the community in administration of justice.

Personal liberty is fundamental and can be circumscribed only by some process sanctioned by law. Liberty of a citizen is undoubtedly important but this is to balance with the security of the community. A balance is required to be maintained between the personal liberty of the accused and the investigational right of the police. It must result in minimum interference with the personal liberty of the accused and the right of the police to investigate the case. It has to dovetail two conflicting demands, namely, on the one hand the requirements of the society for being shielded from the hazards of being exposed to the misadventures of a person alleged to have committed a crime; and on the other, the fundamental canon of criminal jurisprudence viz. the presumption of innocence of an accused till he is found guilty. Liberty exists in proportion to wholesome restraint, the more restraint on others to keep off from us, the more liberty we have (**A.K. Gopalan v. State of Madras AIR 1950 SC 27**).

The law of bail, like any other branch of law, has its own philosophy, and occupies an important place in the administration of justice and the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal. An accused is not detained in custody with the object of punishing him on the assumption of his guilt."

11. In Moti Ram v. State of M.P. reported in (1978) 4 SCC 47 the Hon'ble Supreme Court, while discussing pretrial detention, held:

"The consequences of pretrial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family."

12. Furthermore, the Hon'ble Supreme Court in **Sanjay Chandra v. CBI, reported in (2012) 1 SCC 40**, dealing with a case involving an economic offence of formidable magnitude, touching upon the issue of grant of bail, had observed that deprivation of liberty must be considered a punishment unless it is required to ensure that an accused person would stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction and that every man is deemed to be innocent until duly tried and found guilty. It was underlined that the object of bail is jurisprudentially neither punitive nor preventive. Although the Hon'ble Supreme Court sounded a caveat that any imprisonment before conviction does have a substantial punitive content. It was elucidated therein that the seriousness of the charge, is no doubt one of the relevant considerations while examining the application of bail but it was not only the test or the factor and that grant or denial of such privilege is regulated to a large extent by the facts and circumstances of each particular case. It was also held that detention in custody of under-trial prisoners for an indefinite period would amount to violation of Article 21 of the Constitution was highlighted.

13. It would also be apposite at this juncture to reproduce the Hon'ble Delhi High Court's succinct elucidation of the legal position in matters pertaining to

bail as laid down in *Anil Mahajan v. Commissioner of Customs and H.B. Chaturvedi v. CBI*, wherein the Hon'ble High Court after considering the judgments, inter alia, in *Gurcharan Singh v. State (Delhi Administration)* and *Gudikanti Narasimhulu v. Public Prosecutor*, observed as follows:

The legal position emerging from the above discussion can be summarized as follows:

(a) *Personal liberty is too precious a value of our Constitutional System recognized under Article 21 that the crucial power to negate it is a great trust exercisable not casually but judicially, with lively concern for the cost to the individual and the community. Deprivation of personal freedom must be founded on the most serious considerations relevant to the welfare objectives of society specified in the Constitution.*

(b) *As a presumably innocent person the accused person is entitled to freedom and every opportunity to look after his own case and to establish his innocence. A man on bail has a better chance to prepare and present his case than one remanded in custody. An accused person who enjoys freedom is in a much better position to look after his case and properly defend himself than if he were in custody. Hence grant of bail is the rule and refusal is the exception.*

(c) *The object of bail is to secure the attendance of the accused at the trial. The principal rule to guide release on bail should be to secure the presence of the applicant to take judgment and serve sentence in the event of the Court punishing him with imprisonment.*

(d) *Bail is not to be withheld as a punishment. Even assuming that the accused is prima facie guilty of a grave offence, bail cannot be refused in an indirect process of punishing the accused person before he is convicted.*

(e) *Judges have to consider applications for bail keeping passions and prejudices out of their decisions.*

(f) *In which case bail should be granted and in which case it should be refused is a matter of discretion subject only to the restrictions contained in Section 437(1) of the Criminal Procedure Code. But the said discretion should be exercised judiciously.*

(g) The powers of the Court of Session or the High Court to grant bail under Section 439(1) of Criminal Procedure Code are very wide and unrestricted. The restrictions mentioned in Section 437(1) do not apply to the special powers of the High Court or the Court of Session to grant bail under Section 439(1). Unlike under Section 437(1), there is no ban imposed under Section 439(1) against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. However while considering an application for bail under Section 439(1), the High Court or the Court of Sessions will have to exercise its judicial discretion also bearing in mind, among other things, the rationale behind the ban imposed under Section 437(1) against granting bail to persons accused of offences punishable with death or imprisonment for life.

(h) There is no hard and fast rule and no inflexible principle governing the exercise of such discretion by the Courts. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or refusing bail. The answer to the question whether to grant bail or not depends upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.

(i) While exercising the discretion to grant or refuse bail the Court will have to take into account various considerations like the nature and seriousness of the offence; the circumstances in which the offence was committed; the character of the evidence; the circumstances which are peculiar to the accused; a reasonable apprehension of witnesses being influenced and evidence being tampered with; the larger interest of the public or the State; the position and status of the accused with reference to the victim and the witness; the likelihood of the accused fleeing from justice; the likelihood of the accused repeating the offence; the history of the case as well as the stage of investigation, etc. In view of so many variable factors the considerations which should weigh with the Court cannot be exhaustively set out. However, the two paramount considerations are: (i) the likelihood of the accused fleeing from justice and (ii) the likelihood of the accused tampering with prosecution evidence. These two considerations in fact relate to ensuring a fair trial of the case in a Court of justice and hence it is essential that due and proper

weight should be bestowed on these two factors.

(j) *While exercising the power under Section 437 of the Criminal Procedure Code in cases involving non-bailable offences except cases relating to offences punishable with death or imprisonment for life, judicial discretion would always be exercised by the Court in favor of granting bail subject to Sub-section (3) of Section 437 with regard to imposition of conditions, if necessary. Unless exceptional circumstances are brought to the notice of the Court which might defeat proper investigation and a fair trial, the Court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life.*

(k) *If investigation has not been completed and if the release of the accused on bail is likely to hamper the investigation, bail can be refused in order to ensure a proper and fair investigation.*

(l) *If there are sufficient reasons to have a reasonable apprehension that the accused will flee from justice or will tamper with prosecution evidence he can be refused bail in order to ensure a fair trial of the case.*

(m) *The Court may refuse bail if there are sufficient reasons to apprehend that the accused will repeat a serious offence if he is released on bail.*

(n) *For the purpose of granting or refusing bail there is no classification of the offences except the ban under Section 437(1) of the Criminal Procedure Code against grant of bail in the case of offences punishable with death or life imprisonment. Hence there is no statutory support or justification for classifying offences into different categories such as economic offences and for refusing bail on the ground that the offence involved belongs to a particular category. When the Court has been granted discretion in the matter of granting bail and when there is no statute prescribing a special treatment in the case of a particular offence the Court cannot classify the cases and say that in particular classes bail may be granted but not in others. Not only in the case of economic offences but also in the case of other offences the Court will have to consider the larger interest of the public or the State. Hence only the considerations which should normally weigh with the Court in the case of other non- bailable offences should apply in the case of economic offences also. It cannot be said that bail should invariably be refused in cases involving serious economic offences...."*

14. Reverting to the case in hand, no doubt the offence alleged against the

petitioner is a serious one in terms of alleged huge loss to the informant but that by itself should not deter this court from enlarging the petitioner on bail when there is no serious contention of the opposite parties that the petitioner, if released on bail would interfere with the trial or temper with evidence.

15. Having regard to the entire facts and circumstances of the case specially the fact that the charge sheet has already been submitted against the present petitioner and the prosecution has cited around 63 witnesses in the charge sheet and the trial has not yet been commenced, I do not find any justification for detaining the petitioner in custody any longer.

16. It is, therefore, directed that the petitioner shall be released on bail in connection with aforesaid case on furnishing a bond of **Rs. 1,00,000/- (Rupees One Lakh Only)** with **two sureties of the like amount** to the satisfaction of learned **Chief Judicial Magistrate, Kamrup(M), Guwahati**.

The bail is granted subject to the following conditions –

(i) The petitioner shall not leave the territorial jurisdiction of the Chief Judicial Magistrate, Kamrup (M), Guwahati without prior written permission from him/her.

(ii) The petitioner shall cooperate with the trial and shall not directly or indirectly allure or make any inducement, threat or promise to the prosecution witnesses so as to dissuade them from disclosing truth before the court.

(iii) In case of his involvement in any other criminal activities or breach of any other aforesaid conditions, the bail granted in this case shall be cancelled.

(iv) The petitioner shall submit his passports if any before the

Learned trial court and he shall not leave India without prior permission of the trial court.

17. With the above directions, the instant bail application is allowed. However, expression of any opinion hereinbefore may not be treated as a view on the merits of the case.
18. The bail application is accordingly disposed of.

JUDGE

Comparing Assistant