

GAHC010009192024



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

Case No. : Bail Appln./158/2024

SACHIN PRABHAKAR ADHIKARI
S/O- LATE PRABHAKAR ADHIKARI, 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 MRS. JUSTICE MITALI THAKURIA
ORDER**

17.02.2024

Heard Mr. A. K Desai, learned Senior Counsel assisted by Mr. P. Borah, learned Senior Counsel for the petitioner. Also heard Mr. M. Phukan, learned Public Prosecutor for the State respondent and Mr. T. J. Mahanta, learned Senior Counsel assisted by Mr. T. Gogoi, learned counsel for the informant.

2. This is an application under Section 439 of the Code of Criminal Procedure, 1973 for grant of bail to the accused/ petitioner, who has been arrested on 10.12.2023 in connection with Fatasil Ambari P.S. Case No. 220/2023, registered under Sections 120B/406/409/419/420/467/468/471/477-A/506/34 of the Indian Penal Code.

3. It is stated that the complainant- Amit Tipnis lodged the F.I.R. before the Officer-In-Charge, Fatasil Ambari Police Station on 23.09.2023 alleging of siphoning of funds at the behest of the accused persons named in the F.I.R., including the present accused/petitioner. On receipt of the said F.I.R., a case has been registered as Fatasil Ambari P.S. Case No. 220/2023, under Sections 120B/406/409/419/420/467/468/471/477-A/506/34 of the Indian Penal Code. However, from the F.I.R., it is seen that it is a clear abuse of the process of law, wherein the civil disputes being given criminal colour only to harass the present accused/petitioner, who is a law abiding person. The subject matter of the entire case is share in profits of Britt and BWW, wherein the civil remedy is available and appropriate relief cannot be obtain under the criminal proceeding. Further, the complainant himself, being the Director of Britt and BWW, has signed all the financial documents and is responsible for the actions of the said companies and thus making him liable under the provision of Companies Act, 2013 for the alleged offences.

4. Further it is contended that the accused is also arrested without any authority of law and also in contravention of Article 22(2) of the Constitution of India. The accused/petitioner was arrested on 09.12.2023 from Belapur, Navi

Mumbai by the Investigating Agency in blatant violation of law of land and was flown to Assam for appearance before the Court of learned Magistrate here at Assam. The Investigating Agency also failed to obtain the transit remand from the nearest Magistrate and instead came to Assam along with the accused/petitioner. Thereafter, the accused was forwarded and produced before the learned Chief Judicial Magistrate (M) at Guwahati and on his production, the learned Court below was pleased to remand the accused to police custody for a period of 7 (seven) days. The accused/petitioner had never been a recipient of any illegal monetary gains from Britt or BWW or VIZTAR or involved in any siphoning of funds as alleged or otherwise. The complainant alleges siphoning of funds from the companies wherein he himself is the signing authority and Director.

5. Mr. A. K Desai, learned Senior Counsel for the petitioner, further submitted that the Investigating Agency has acted in contravention of the settled provision of law which *inter alia* states that arrest may be made only when it is reasonably felt that the individual so arrested is involved in the commission of heinous crime will be prosecuted in the Court of law and it is feared that he is likely to hamper or destroy the evidence or is likely to evade the process of law. But the present accused/ petitioner never committed any heinous crime nor is he likely to tamper with the evidence or evade the process of law. More so, the entire case involves document and money trail, which can be evident from the documents and hence, there arises no question for requirement of custodial interrogation of the accused/ petitioner herein. The accused/petitioner was put to police custody since December, 2023 and till date, the prosecution has not recorded his statement and accordingly his further custodial detention is not required and thus, he deserves the privilege of bail at this stage. The

Investigating Agency failed to show any reasonable apprehension that the petitioner would attempt to leave the country or tamper with evidence or will commit any offence while on bail. While filing the complaint, the informant has already audited the balance sheet and the financial statements of BWW/Britt, as the case may be, and hence, the documents are already in possession of the complainant and thus, the question of further custodial interrogation is not at all necessary. Further, the complainant is also a family member and close relative of the present accused/petitioner and he always used to approach the present accused/petitioner for his advice and guidance. In this capacity, the present accused/petitioner- Shri Sachin Adhikari was also been appointed as Chief Global Advisor/Chief Mentor of Britt and BWW, which was purely an honorary and non-remunerative post.

6. Further it is submitted by the learned Senior Counsel, Mr. Desai, appearing on behalf of the petitioner, that due to the constant harassment receiving from the complainant, the accused/petitioner suffered a brain stroke in the year 2020 and thereafter his health, mental and physical condition was immensely affected and he remain under constant medical supervision, being declared vulnerable to dementia, speech blurriness etc. The learned Senior Counsel further submitted that from the entire facts and circumstances of this case and from the subject matter, it is seen that it is nothing but a deception to give criminal colour to dispute of purely civil nature out of the grievance of the complainant for having being denied share in profits of BWW and Britt.

7. Further it is submitted that the jurisdiction of the present case also lies where the transaction had taken place and the parties face consequences. But,

here in the instant case, all the agreements and the companies also lies in Maharashtra, Mumbai and thus, this Court also does not have the jurisdiction to try the matters. More so, the investigation has already been completed and all the documents related to this case are already been examined by the I.O. and presently all the documents are in the custody and possession of the complainant and thus, there is no question of hampering or tampering the evidence of this case which are basically on the document. Furthermore, the accused/ petitioner is not at a flight risk and has no criminal antecedent. So considering all these aspects of the matter, it is a fit case wherein the accused/petitioner can be enlarged on bail. More so, considering the present health status of the accused/petitioner, he may be enlarged on bail. Moreover, the I.O. had visited jail on 31.01.2024 and 07.02.2024, wherein the petitioner was interrogated and he had duly co-operated with the I.O. Further, the allegation in the F.I.R. are for siphoning of funds by the accused person from Britt and BWW from the year 2007 to 2021 and the complainant is aggrieved only on the fact that though he was promised a share in the profits, he was merely paid salary and all the profits were attributed by the accused persons. Thus, the entire dispute is for commercial transaction between the corporate entities undertaken by the complainant himself involving private money. More so, the complainant is the Director and Shareholder of the Britt since the year 2011 and thus, the question of siphoning of fund from the company do not arise.

8. In support of his submissions, the learned Senior Counsel for the petitioner also relied on the following decisions:

- (i) **Santosh S/o Dwarkadas Fafat Vs. State of Maharashtra**, reported in **(2017) 9 SCC 714**,
- (ii) **Pankaj Bansal Vs. Union of India**, reported in **(2023) SCC OnLine SC 1244**;
- (iii) **Arnab Manoranjan Goswami Vs. State of Marashtra & Ors.**, reported in **(2021) 2 SCC 427**; **Satender Kumar Antil Vs. CBI**, reported in **(2022) 10 SCC 51**;
- (iv) **Satender Kumar Antil Vs. CBI**, reported in **(2022) 10 SCC 51**;
- (v) **Sumdedh Singh Saini Vs. State of Punjab**, reported in **(2021) 15 SCC 588**;
- (vi) **Ugochukwu Solomon Ubabuko Vs. Union of India**, reported in **2021 SCC OnLine Bom 3572**.

9. In the cases of **Santosh (supra)** and **Pankaj Bansal (supra)**, as referred to herein above, the Hon'ble Apex Court has expressed the view that the custodial interrogation is not for the purpose of confession as the right against self incrimination is provided by Article 20(3) of the Constitution. Merely because the appellant did not confess, it cannot be said that appellant was not cooperating with investigation. However, in case there is no cooperation on the part of appellant for completion of investigation, it is open for respondent to seek for cancellation of bail.

10. Accordingly, the learned Senior Counsel for the petitioner has submitted that only with the allegation that the accused/ petitioner is not cooperating the I.O. that cannot be the sole basis for rejection of the bail application. He mainly gives emphasize on paragraph No. 28 of the judgment passed in **Pankaj Bansal (supra)**, which reads as under:

“28. ... In Santosh S/o Dwarkadas Fafat vs. State of Maharashtra, this Court noted that custodial interrogation is not for the purpose of ‘confession’ as the right against self-

incrimination is provided by Article 20(3) of the Constitution. It was held that merely because an accused did not confess, it cannot be said that he was not co-operating with the investigation. Similarly, the absence of either or both of the appellants during the search operations, when their presence was not insisted upon, cannot be held against them.”

11. In the case of **Arnab Manoranjan Goswami (supra)**, the Hon’ble Apex Court, basically in paragraph No. 67 of the judgment, has expressed the view that the human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation. Further, in paragraph No. 70 of the judgment, the Hon’ble Apex Court has also discussed the judgment passed in *State of Rajasthan Vs. Balchand*, wherein it has been held that rule of our criminal justice system is “bail, not jail”. The High Courts and Courts in the district judiciary of India must enforce this principle in practice, and not forego that duty, leaving this Court to intervene at all times.

12. Mr. Desai, learned Senior Counsel for the petitioner, further submitted that the present case cannot come under the purview of economic offence and it is purely a commercial dispute between two private parties and thus, it cannot be held as an economic offence. He accordingly relied on paragraph 90 of the judgment passed in **Satender Kumar Antil (supra)**, which reads as under:

“90. What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in the case of P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791, after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis. Suffice it to state that law, as laid down in the following judgements, will govern the field:”

13. The judgments relied by the learned Senior Counsel for the petitioner in

case of **Sumedh Singh Saini (supra)** and **Ugochukwu Solomon Ubabuko (supra)** mainly deals with the delay in lodging of the F.I.R.

14. Per contra, Mr. M. Phukan, learned Public Prosecutor, has submitted that the Investigating Officer has collected sufficient materials against the present accused/petitioner and the matter is still under investigation. Further he submitted that though the accused was arrested in connection with this case on 10.12.2023, he was produced before the learned Court below on 11.12.2023 and thereafter, considering his health ground, he was sent for treatment to GMCH and he was admitted in hospital for around 45-46 days and thereafter he was released from hospital and he is in judicial custody since 25.01.2024. Thus, the Investigating Officer did not get the opportunity to interrogate the accused, though he was stated to be in custody for last 63 days. Further he submitted that from the materials available in the Case Diary, it is seen that present accused/petitioner is not co-operating the I.O. and did not disclose any relevant facts involved in this case. From the statement of the co-accused, i.e. the wife of the petitioner, it is seen that she admitted before the I.O. that they are the proprietor of 9 (nine) companies, which was denied by the present accused/petitioner. More so, he submitted that from the statement made by the informant under Section 164 Cr.P.C., it is seen that Rs. 139 Crores of fund of BWW was transferred to the Shell Companies owned by the present petitioner and his wife/co-accused. Though the informant is a 50% Shareholder and stated to be the Director of the Company, but he is not even in a position to pay salaries to the employees, rather he is receiving the salary from the Company. However, the accused/petitioner and his wife promised to return his profit of Rs. 90 Crores before filing of this F.I.R., but he did not repay the said Rs. 90 Crores

which is the share profits of the informant. There is every possibility that the accused/petitioner and his wife, being the proprietor of 9 (nine) numbers of companies, may tamper with the documents of the said companies as it is the allegation brought against them that they have misappropriated the fund of BWW and Britt and those were deposited in the account of said 9 (nine) numbers of companies.

15. The learned Public Prosecutor further submitted that though the dispute is private in nature, but the public money is also involved in this case as there is sufficient bank loan involved which can be stated to be public money. Accordingly, it is submitted that the present case can also be considered as economic offence which is considered to be class apart. In this context, he also relied on the decisions of Hon'ble Apex Court passed in **P. Chidambaram Vs. Directorate of Enforcement [Criminal Appeal No.1831/2019]** and **Nimagadda Prasad Vs. Central Bureau of Investigation [(2013) 7 SCC 466]**, wherein the Hon'ble Apex Court has expressed the view that the economic offence constitute a class apart and need to be visited with a different approach in the matter of bail. The learned Public Prosecutor mainly emphasized on paragraph Nos. 23, 24 & 25 of **Nimagadda (supra)**, which are read as under:

“23. Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fiber of the country’s economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In State of Gujarat vs. Mohanlal Jitamalji Porwal and Anr. (1987) 2 SCC 364 this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under:-

“5.....The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool

calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest....”

24. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce *prima facie* evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.”

16. Mr. Phukan, learned Public Prosecutor, further submitted that the long detention of the accused or the applicant cannot be the sole ground for granting bail and the nature and gravity of the offence should be considered at the time of granting bail. In this context, he relied on a decision of Hon'ble Apex Court passed in **State of Bihar & Anr. Vs. Amit Kumar @ Bachcha Rai**, reported in **(2017) 13 SCC 751**, and mainly emphasized on paragraph Nos. 8, 9 & 10 of the said judgment, which read as under:

“8. A bare reading of the order impugned discloses that the High Court has not given any reasoning while granting bail. In a mechanical way, the High Court granted bail more on the fact that the accused is already in custody for a long time. When the seriousness of the offence is such mere fact that he was in jail for however long time should not be the concern of the Courts. We are not able to appreciate such a casual approach while granting bail in a case which has the effect of undermining the trust of people in the integrity of the education system in the State of Bihar.

9. We are conscious of the fact that the accused is charged with economic offences of huge magnitude and is alleged to be the kingpin/ring leader. Further it is alleged that the respondent-accused is involved in tampering with the answer sheets by illegal means and interfering with the examination system of Bihar Intermediate Examination 2016 and thereby securing top ranks, for his daughter and other students of Vishnu Rai College, in the said examination. During the investigation when a search team raided his place various documents relating to property and land to the tune of Rs. 2.57 Cr. were recovered besides Rs.20 lakhs in cash. In addition to this, allegedly a large number of written answer sheets of various students, letter heads and rubber stamps of several authorities, admit cards, illegal fire arm etc. were found which establishes a *prima facie* case against the respondent. The allegations against the respondent are very serious in nature, which are reflected from the excerpts of the case dairy. We are also conscious of the fact that the offences alleged, if proved, may jeopardize the credibility of the education system of State of Bihar.

10. The learned senior counsel appearing for the respondent claimed parity with twenty eight (28) other accused persons in the same case who have already been granted bail. We find that though some of accused are released on bail most of them are teachers who performed the invigilation duty and members of the Managing Committee against whom the charges are not so serious. It is not appropriate to compare the case of the accused-respondent, with those who were on bail, as the respondent is alleged to be the king-pin of the entire crime.”

17. Accordingly, the learned Public Prosecutor has submitted that in the instant case also, the present accused/petitioner is the kingpin of the entire organized crime and thus the law of parity cannot be considered.

18. Coming to the point of jurisdiction, it is submitted by Mr. Phukan, learned Public Prosecutor, that at the relevant point of time, the Office of the Company was set up at Bhaskar Nagar Jyoti Path, Guwahati and hence, it cannot be held that the learned Magistrate of Assam has no jurisdiction to try the case.

19. The learned Public Prosecutor further relying on a decision of Hon'ble Supreme Court passed in the case of **State of Gujarat Vs. Mohanlal Jitamalji Porwal**, reported in **(1987) 2 SCC 364**, has submitted that a murder may be committed in the heat of moment upon passions being aroused.

An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community.

20. Accordingly, Mr. Phukan, learned Public Prosecutor, has submitted that it is not at all a fit case wherein the accused can be enlarged on bail. He further submitted that his custodial interrogation is essential for the interest of the investigation and there is every probability of tampering the documents at this stage of investigation as he has not disclosed the relevant facts of the case before the I.O. at the time of interrogation. Thus, he raised vehement objection in allowing the accused/petitioner to release on bail.

21. Mr. T. J. Mahanta, learned Senior Counsel appearing on behalf of the informant, has also subscribed to the submission of the learned Public Prosecutor and further submitted that the fund siphoned off from the Britt and BWW are already been transferred to the 9 (nine) numbers of Companies where the present accused/petitioner and his wife are the proprietors. From the submissions of learned Public Prosecutor, it also reveals that the present accused/petitioner is not co-operating the I.O. in the investigation of the case and he did not disclose any relevant fact before the I.O., rather there is every chance of tampering the documents of said 9 (nine) numbers of Companies where the funds got transferred from BWW and Britt. Further he submitted that the other co-partners of the company/accused persons are yet to be nabbed by the Investigating Agency. Accordingly, it is submitted that considering the entire circumstances of the case and the nature of the offence, the bail should not be granted to the present accused/petitioner at this stage.

22. After hearing the submissions made by the learned counsels appearing on behalf of the parties and also on perusal of the Case Diary, it is seen that the I.O. has collected sufficient incriminating materials against the present accused/petitioner, who may be considered as the kingpin of the entire crime. It is a fact that the accused/petitioner was arrested in connection with this case on 10.12.2023, but after his arrest, he was admitted in GMCH for around 45-46 days for his treatment and was released from the hospital only on 25.01.2024 and since then, he is in judicial custody. Thus, it is seen that though the accused/ petitioner is in custody for last 63 days, but he was in judicial custody since 25.01.2024. From the submissions made by the learned Public Prosecutor and the learned Senior Counsel for the informant and also from the materials available in the Case Diary, it is seen that the co-accused, i.e. the wife of the present accused/petitioner, has admitted before the I.O. that they are the proprietor of 9 (nine) numbers of companies and it is the allegation of the informant that the fund siphoned off from BWW and Britt are transferred to the said 9 (nine) numbers of companies. Further it is alleged that though the informant is the Director of BWW/Britt, but he has been treated as a salary paid worker and he is not in a position even to pay the salaries of the employees who are working under the said companies. It is also seen that prior to the lodging of the F.I.R., being 50% Shareholder, the accused and his wife promised to pay Rs. 90 Crores as the share of the informant, but they failed to keep their promise, rather the money was siphoned off from the companies to the Shell Companies wherein the accused/ petitioner and his wife are the proprietors.

23. In the case of **Santosh (supra)**, as relied by the learned Senior Counsel for the petitioner, the Hon'ble Apex Court has held that merely because the

appellant did not confess, it cannot be said that appellant was not cooperating with investigation. But, here in the instant case, it is seen that the disclosure of some facts which are involved in the alleged offence are very much essential to go to the root of the investigation and from the materials available in the Case Diary, it is seen that the accused/petitioner is not at all co-operating the I.O. and suppressed the actual fact of the case and thus, he is not disclosing some relevant facts which are essential for the purpose of the investigation. Accordingly, if the present accused/ petitioner is released on bail at this stage, the probability of tampering with the documents, which is still under his possession, also cannot be denied. Further, the possibility of transferring the funds from the said 2 (two) companies, i.e. Britt & BWW, to 9 (nine) numbers of Shell Companies of the present accused/petitioner and his wife is also very high and from such misuse of the fund of the said 2 (two) companies, the informant is also not in a position even to pay the salary of the employees, though he is stated to be the Director and 50% Shareholder of those 2 (two) companies.

24. It is a fact that the dispute arose for a commercial transaction or money transaction, but there cannot be any reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial transaction. In this context, a decision of the Hon'ble Supreme Court can be relied on which was reported in **(1999) 3 SCC 259 (Rajesh Bajaj Vs. State of NCT of Delhi & Ors.)**, wherein in paragraph Nos. 10, 11, 12 & 13 thereof, it has been held as under:

“10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions. One of the illustrations set out under Section 415 of the Indian Penal Code (illustrations f) is worthy of notice now:

"(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats."

11. *The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that respondent after receiving the goods have sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities.*

12. *The High Court seems to have adopted a strictly hyper-technical approach and sieved the complaint through a cullendar of finest gauzes for testing the ingredients under Section 415 , IPC. Such an endeavour may be justified during trial, but certainly not during the stage of investigation. At any rate, it is too premature a stage for the High Court to step in and stall the investigation by declaring that it is a commercial transaction simplicitor wherein no semblance of criminal offence is involved.*

13. *The appellant is, therefore, right in contending that the FIR should not have been quashed in this case and the investigation should have been allowed to proceed."*

25. In view of the entire discussions made above and also in view the law laid down by the Hon'ble Apex Court in the case laws referred to hereinabove, this Court is of the opinion that the period of detention of the accused/ petitioner, i.e. 63 days, cannot be the only ground to allow the accused to go on bail. His further custodial interrogation may be necessary to unearth some other facts involved in this case as well as to nab the other culprits of this case and in the same time, the probability of tampering of the documentary evidence by the accused/ petitioner also cannot be denied at this stage. Therefore, I am of the view that this is not a fit case where the accused/petitioner can be granted with the privilege of bail and accordingly, the same stands rejected.

26. In terms of above, this bail application stands disposed of.

27. The Case Diary be sent back.

JUDGE

Comparing Assistant