

GAHC010039782024



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

Case No. : AB/479/2024

ANUP OJAH
S/O LATE HASMOT OJAH,
RESIDENT OF GANDHIBASTI, MASJID ROAD, PS CHANDMARI, DIST
KAMRUP M ASSAM 781003

2: JAKIR OJAH
S/O LATE HASMOT OJAH

RESIDENT OF GANDHIBASTI
MASJID ROAD
PS CHANDMARI
DIST KAMRUP M ASSAM 78100

VERSUS

THE STATE OF ASSAM
REP BY THE PP ASSAM

Advocate for the Petitioner : MR. A MANNAF

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

11.03.2024

ORDER

Heard Mr. M.K. Choudhury, learned senior counsel assisted by Mr. A. Mannaf, learned counsel for the petitioners. Also heard Mr. D. Das, learned Addl.

PP for the State respondent.

This is an application under Section 438 of the Cr.PC, 1973 praying for pre-arrest bail in favour of the petitioners, i.e., Anup Ojah and Jakir Ojah, who are apprehending arrest in connection with Crime Branch P.S Case No. 03/2024 registered under Section 120(B)/420/468/471/409 IPC.

Mr M.K. Choudhary learned senior counsel submits at the outset that pending adjudication of the Anticipatory Bail application, the Petitioner no.2 i.e. Jakir Ojah has been arrested and hence his name be struck off from the instant Anticipatory Bail application. In terms of the said endorsement, the name of the Petitioner no. 2 i.e. Jakir Ojha stands struck of. Registry is directed to do the needful.

The Anticipatory Bail application is taken up for hearing in respect of Petitioner no. 1 i.e. Anup Ojha.

The facts of the case is that on 28/01/2024 and 27/01/2024 (1) Hirendra Nath Sharma, S/O- Late Prabhat Chandra Sharma of Anubhav Housing Complex, Flat C/2/1 Japorigog Road, Guwahati-5, (2) Hemkanta Deka, S/O- Late Dharmakanta Deka, Rajdhani Apartment, Flat No-103, Block-B, R.G.B. Road, Ganeshguri, P.S.- Dispur, Guwahati- 781006 and (3) Prakash Chandra Barman (71Y), S/O- Late Gobinda Kumar Barman, House No-6, Bylane-1, South Sarania, P.s.- Paltanbazar, Ulubari, Guwahati-781007 lodged complaints before the District Commissioner, Kamrup (M) to the effect that the three brothers i.e. Jakir Ojah (Petitioner no.2), Anup Ojah (Petitioner no.1) and Nipul Ojah had grabbed their lands by using forged deeds which were purchased by their late fathers.

Hirendra Nath Sharma stated that his father Lt. Prabhat Ch. Sarmah purchased a plot of land measuring 1 katha, 10 lechas covered by dag No. 1129 and patta No. 1424 situated at village Sahar Sarania Part-2 under Ulubari Mouza in the District of Kamrup (M), Guwahati, Assam from one Late Hari Kanta Barman on 31.08.1950 and his father died on 15.01.2000 who never sold the land to anybody nor did executed any power of attorney in favour of anybody. But surprisingly the plot of land was illegally occupied by one Anup Ojah (Petitioner no.1) and his brother Jakir Ojah (Petitioner no.2) on the basis of an allegedly forged sale deed bearing No 15065 dated 30.12.2006. Hemkanta Dekha also stated that his father Dharmakanta Dekha purchased two plots of land measuring total 2 kathas 14 lechas in the year 1951 and 1964 and he died on 07.03.1985. But the said plot of land was shown sold by Late Dharmakanta Dekha on 07.09.2005 and 28.04.2006 to Jakir Ojah (Petitioner no.2) vide registered sale deed No 867/05 and 363/06. Prakash Chandra Barman also stated that his father Gobinda Kumar Barman had purchased a plot of land on 11.05.1955 from Late Surendra Nath Sharma vide registered sale deed No 2640 and his father died on 06.05.2006. But the said plot of land was shown sold by Late Gobinda Kumar Barman on 06.05.2006 to Nipul Ojah vide registered sale deed No 393/06. After receiving the complaints, the District Commissioner, Kamrup (M) got the matter to be enquired by Smti Srishti Singh, IAS. After enquiry, Smti Srishti Singh, IAS submitted the enquiry report to the District Commissioner, Kamrup (M) wherein it was reported that the said lands were fraudulently grabbed by Anup Ojah (Petitioner no.1), Jakir Ojah (Petitioner no.2) and Nipul Ojah, who are sons of Late Hasmat Ojah. Also the sale deeds pertaining to the land of Hemkanta Dekha and Prakash Chandra Barman were registered at the office of the Sub-Registrar, Panikhaiti which did not have territorial jurisdiction of

executing the deeds as the land falls under the Guwahati Circle. After obtaining the said report, the District Commissioner, Kamrup (M) District had forwarded the said matter for registering a case and taking necessary action against the miscreants/erring officials. Accordingly, a case vide Crime Branch PS Case No 03/2024 U/S 120B/420/468/471/409/419 IPC was registered and is being investigated into.

Mr. M.K. Choudhury, learned senior counsel submits that in the year 2006 one Sri. Utpal Chandra Das approached the Anup Ojah (Petitioner No.1) to purchase a plot of land measuring 01(one) Katha covered by Dag No.1129 of Patta No.1424 situated at village Sahar Sarania Part-II under Ulubari Mouza in the District of Kamrup(M), Assam. At the time of such approach, he further told that he is the registered General Power of Attorney holder in respect of the said plot of land vide Deed No.573/06 dated 19-06-2006 being executed by the original land owner namely-Prabhat Chandra Sharma. Accordingly, the Anup Ojah (Petitioner No.1) agreed to purchase the said land on a considerable and agreeable amount of Rs.1,50,000/- (Rupees one lakh fifty thousand) only.

He further submits that thereafter, the said Power of Attorney holder, Utpal Chandra Das took responsibility for obtaining necessary sale permission and also other formalities for selling the land. In due course of time, said Utpal Chandra Das obtained sale permission vide No.KRM-2/2006/272 dated 13-11-2006 from the office of the Deputy Commissioner, Kamrup.

He further submits that after obtaining sale permission and also on being paid the considered sale amount of Rs.1,50,000/- said Power of Attorney holder Utpal Chandra Das executed a registered sale Deed vide No.15065 dated 30-12-

2006 in the office of the Sub-Registrar, Guwahati in favour of Anup Ojah (Petitioner No.1).

He further submits that after execution of the sale Deed the Anup Ojah (Petitioner No.1) filed an application before the Circle Officer, Guwahati for mutation and accordingly, his name is mutated in the land record vide order dated 13-07-2007 passed by Circle Officer, Guwahati and his name is recorded in the land Jamabandhi. He further submits that Anup Ojah (Petitioner No.1) has already sold out the said plot of land to one Smti. Mini Ojah.

He further submits that the aforesaid sale transaction took place on 30-12-2006 and thereafter, the informant Sri. Hirendra Nath Sharma and his sister Dr. Bharati Sharma instituted a Title Suit being T.S. No.55/2009 in the court of Civil Judge No.3, Kamrup(M), Guwahati against the petitioners and said Power of Attorney holder, Utpal Chandra Das claiming for declaration of right, title and interest, cancellation of Sale Deed (Annexure-3), recovery of possession and permanent injunction. Thereafter, the Hon'ble Civil Court after examining all aspects of the matter was pleased to dismiss the suit of the informant vide judgment and order dated 07-08-2015 observing as *"The suit stands dismissed on contest. Considering the facts and circumstances of the case, parties are left to bear their own costs. Draw up a decree accordingly."*

He further submits that thereafter the informant Sri. Hirendra Nath Sharma and his sister Dr. Bharati Sharma preferred an appeal before Hon'ble Gauhati High Court being R.F.A. No.60/2015 and in the said appeal, notices were issued against the present petitioners and said Power of Attorney holder Utpal Chandra Das. Now, the appeal is pending before Hon'ble Gauhati High Court for final

hearing.

He further submits that the present dispute in between the petitioners and informant is a civil dispute which is in fact, presently pending before Hon'ble High Court in R.F.A. No.60/2015 preferred by the informant. He further submits that the informant has lodged the instant FIR maliciously with an ulterior motive as to harass the petitioners which is not permissible under law. He further submits that the informant has influenced the Crime Branch Police, Guwahati suppressing the facts of civil cases instituted one after another and now pending before Hon'ble High Court in R.F.A. No.60/2015 as well as suppression of judgment and order dated 07-08- 2015 passed by Civil Judge No.3, Kamrup(M), Guwahati in T.S.No.55/2009.

He further submits that the petitioners are totally innocent having no involvement in the offences as alleged in the FIR.

Mr. D. Das, learned Addl. P.P on the other hand strongly opposes the prayer for bail. He submits that there are sufficient materials collected by the IO implicating the petitioners for the offence alleged.

I have heard the submissions made at the bar and have perused the materials available on record.

It appears that during investigation of the case, from the statement of the complainant Hirendra Nath Sharma, it is learnt that the plot of land which was purchased by his father in the year 1950 was shown sold by one Utpal Chandra Das, Anup Ojah (Petitioner no.1), vide registered sale deed No. 15065 dated

30.12.2006 on the basis of power of attorney bearing No 573/06 after six years of death of original owner Late Prabhat Chandra Sharma, who died on 15.01.2000. The provisional death certificate of Late Prabhat Chandra Sharma and the original power of attorney bearing No 573/06 dated 19.06.2006 was also seized during course of investigation which corroborates the same. It further appears that the informant stated that two adjacent plots, which are belongs to Hemkanta Deka and Prakash Chandra Barman were also illegally grabbed by Jakir Ojah (Petitioner no.2) and Nipul Ojah, who are brothers of Arup Ojha (Petitioner no.1) respectively on the strength of some forged sale deeds.

Accordingly, Hemaknta Deka and Praksah Chandra Barman were also examined and their statements were recorded. During statement recording, Hemkanta Deka stated that his father Dharmakanta Deka purchased two plots of land measuring total 2 kathas 14 lechas in the year 1951 and 1964 and he died on 07.03.1985. The death certificate of Dharmakanta Deka was seized during investigation which corroborates the same. But the said plot of land was shown sold by Late Dharmakanta Deka on 07.09.2005 and 28.04.2006 to Jakir Ojah(Petitioner no.2) vide registered sale deed No 867/05 and 363/06 which indicates that the sale deeds are forged. The volume book of Panikhaiti Sub-Register Office pertaining to said deed bearing Volume No 4/06 and 8/05 are also seized in connection with the case wherein both the afore said sale deeds are found available.

Another victim Prakash Chandra Barman also stated that his father Gobinda Kumar Barman had purchased a plot of land on 11.05.1955 from Late

Surendra Nath Sharma vide registered sale deed No 2640 and his father died on 26.02.1990. The death certificate of Late Gobinda Kumar Barman was seized during investigation which corroborates the same. But the said plot of land was shown sold by Late Gobinda Kumar Barman on 06.05.2006 to Nipul Ojah vide registered sale deed No 393/06 which indicates that the said sale deed is forged one. The volume book bearing No 4/06 of Panikhaiti Sub-Registrar Office is also seized during investigation in this regard which corroborates the fact.

It further appears that the informant and other two aggrieved persons filed complaint before the District Commissioner, Kamrup (M), District Guwahati and accordingly an enquiry was initiated, wherefrom it reveals that all the three plots of land are adjacent plot of land and were fraudulently grabbed by the accused persons in a systematic process.

It further appears that there are sufficient materials available against the alleged accused petitioners i.e. Jakir Ojah, Anup Ojah which shows that they have committed serious offences in violation of the established procedure of law in connivance with other persons. Pending this Anticipatory Bail application, Petitioner No.2 i.e. Jakir Ojah is already arrested and after producing him before the Hon'ble Court, he was remanded to police custody for a period of 7 (seven) days. During custodial interrogation, he has admitted that the alleged offence was committed by him and his brothers Anup Ojah (Petitioner No.1) and Nipul Ojah with the help of some other persons such as Govt. Officials. He also admitted that there is no real existence of Utpal Chandra Das and the character of Utlap Chandra Das is a vague one. Accordingly another person namely Sarifuddin Ahmed has been arrested, who helped the accused persons in

registering the alleged forged sale deeds. Attempt was also made to apprehend the Petitioner no.1 i.e. Anup Ojha, but he is evading the police investigation. It is abundantly clear from the materials available on record that the accused petitioners have played an active role in the subject land grabbing. Thus the element of criminality is prima facie evident. It is imperative to unearth the truth.

It appears that the custodial interrogation of the Petitioner no. 1 i.e. Anup Ojha is required to unearth the entire nexus of forgery by which the land was grabbed. As such the custodial interrogation of petitioner no.1 Anup Ojah is required in the interest of justice.

Considering that the investigation is at an active stage, this Court is not inclined to grant anticipatory bail to the Petitioner no.1 i.e Anup Ojha at this stage.

Accordingly, the Anticipatory Bail application stands rejected.

JUDGE

Comparing Assistant