

GAHC010006622024



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

Case No. : Bail Appln./83/2024

AOICCHARJYA JIBON BARUAH
S/O SRI APURBA JIBON BARUAH
R/O HOUSE NO. 13
TARUN NAGAR
ABC OPPOSITE SWADESHI ACADEMY
GUWAHATI
DIST. KAMRUP (M)
ASSAM
PIN-781005

VERSUS

THE STATE OF ASSAM
REP. BY THE PP
ASSAM

Advocate for : MR. A C BURAGOHAIN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER**

25.01.2024.

Heard Mr. A. K. Bhattacharjee, learned Senior Counsel, assisted by Mr. H Buragohain, learned counsel for the accused and Mr. M. Phukan, learned

Public Prosecutor, Assam for the State respondent.

2. This application, under Section 439 of the Code of Criminal Procedure, is preferred by accused, namely, **Aoicharjya Jibon Baruah**, who has been languishing in jail hazoot since 22.11.2023, in connection with **Dibrugarh P.S. Case No. 936/2016**, registered under Sections 7/13(1)(a)(b) (d)(2) of the P.C. Act read with section 120-B/420 IPC and added section 463/468/471/477(A)/201 IPC, for granting bail.

3. The aforementioned case has been registered on the basis of an FIR lodged by Dr. Anshumita Gogoi on 27.10.2016.

4. The essence of allegations made in the FIR dated 27.10.2016, is that one Nabakanta Patir has contacted her and asked her to pay sum of Rs.10,00,000/ for recruiting her in a post of Dental Surgeon, conducted by APSC. And while she came to Dibrugarh to hand over aforementioned sum then Police caught him red handed.

5. Mr. Bhattacharjee, learned Senior Counsel for the accused submits that the accused was arrested on 22.11.2023, and since then he has been languishing in jail hazoot. Mr. Bhattacharjee further submits that at the time of arrest of the accused the I.O. has not served him any Notice as mandated by section 41A Cr.P.C. and as held by Hon'ble Supreme Court in the case of **Satinder Kumar Antil vs. CBI & Another** reported in **(2022) 10 SCC 51**.

Further, Mr. Bhattacharjee submits that given the nature of allegation leveled against the accused in the Forwarding Report none of the provisions of P.C. Act is applicable against him and that in the year 2013 the accused was not a public servant and that one of the co-accused has already been granted the privilege of bail by this court vide order dated 11.01.2024

in BA No. 4680 of 2023, and that he is ready to face the trial and therefore, it is contended to allow the petition.

6. On the other hand, Mr. M. Phukan, the learned Public Prosecutor, Assam submits that sections 7/13(1)(a)(b)(d)(2) of the P.C. Act are very much applicable herein this case, as the accused was involved in the conspiracy of bribing a public servant and the punishment prescribed for the same are more than 7 years and therefore I.O. has not given any Notice under section 41A Cr.P.C. and that the I.O. has collected sufficient materials and submitted charge sheet against the accused and therefore, it is contended to dismiss the petition. Mr. Phukan has referred to a decision of Hon'ble Supreme Court in **Rakesh Kumar Paul vs. State of Assam** reported in **(2017) 15 SCC 67**, in support of his submission.

7. In reply to above submissions of learned P.P., the learned counsel for the accused, referring to Article 20(1) of the Constitution of India submits that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence. And this is fundamental right of the accused.

8. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record.

9. The allegation against the accused, as revealed by the forwarding report is that he has obtained job of Assam Government by adopting unlawful means in collusion with arrested accused Rakesh Kumar Paul and other officials of APSC. Also it appears that he has used illegal means to increase his marks in CCE-2013 by inserting fake Answer Sheet into his original Answer Sheet.

10. It also appears that the Forwarding Report is silent as regard to

compliance of the provision of section 41A Cr.P.C. before causing arrest of the accused. While the learned Addl. P.P. could not produced the case diary before the court he was asked to obtain necessary instruction as regard the compliance of the provision of aforesaid section and accordingly the learned Addl. P.P., after obtaining instruction, appraised the court that the same was not complied with as the case was registered under sections 7/13(1)(a)(b)(d)(2) of the P.C. Act, also apart from sections under IPC.

11. Now, the issue before this court is whether there is requirement of compliance under section 41 A- Cr.P.C. It is a fact that the case has been registered under section 7/13(1)(a)(b)(d)(2) of the P.C. Act, apart from sections under IPC. The contention of the learned counsel for the accused is that though the punishment prescribed under the aforementioned section of P.C. Act is above 7 years after Amendment of the P.C. Act in the year 2018, yet, the occurrence of the present case took place in the year 2013 while the old provision of the Act was in force where punishment prescribed was up to 7 years, and as such, according to learned counsel for the accused, there is requirement of compliance of the provision of section 41A Cr.P.C.

12. There appears to be substance in the submission of the learned counsel for the accused, in as much as the amended provisions of the P.C. Act came in to force from 2018, by which the punishment prescribed in some provisions have been enhanced. However, the occurrence took place in the year 2013. And at that time the old provision of the Act was in force where punishment prescribed was up to 7 years, and as such, there is requirement of compliance of the provision of section 41A Cr.P.C. as held by Hon'ble Supreme Court in the case of **Satinder Kumar Antil** (supra).

13. It is to be mentioned here that in the aforementioned case, while

drawing summary/conclusion Supreme Court has held as under:-

“100. In conclusion, we would like to issue certain directions. These directions are meant for the investigating agencies and also for the courts. Accordingly, we deem it appropriate to issue the following directions, which may be subject to State amendments:

100.1. The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.

100.2. The investigating agencies and their officers are duty-bound to comply with the mandate of Sections 41 and 41-A of the Code and the directions issued by this Court in *Arnesh Kumar [Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449]* . Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

100.3. The courts will have to satisfy themselves on the compliance of Sections 41 and 41-A of the Code. Any non-compliance would entitle the accused for grant of bail.....”

14. Though the learned Public Prosecutor, relying upon decision of Hon'ble Supreme Court in **Rakesh Paul** (supra) specially upon paragraph No. 55, argued that though the P.C. Act was amended in the year 2018, yet Lokpal Act and Lokayuktas Act, was enacted in the year 2013, and section 58 of the of the said Act provides for amendment of certain enactments, including the P.C. Act. But, this court is unable to record concurrence to such a submission in as much as that was a proposal and in fact the amendment so proposed was enacted in the year 2018 and the same came into force with effect from 26.07.2018. Moreover, herein this case no prosecution was launched under the Lokpal and Lokayuktas Act, 2013. Besides, Article 20(1) of the Constitution of India which provides that “*no person shall be convicted*

of any offence except for violation of a law in force at the time of the commission of the act charged as an offence. And this is fundamental right of the accused, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

15. It is to be mentioned here that in the said case, in para, No. 55 Hon'ble Supreme Court has held as under:-

"55. The first submission of Mr Abhishek Manu Singhvi, learned Senior Counsel, was that the amendments made to the PC Act whereby the sentence for committing the offence under Section 13 has been increased from a minimum of one year to a maximum of 7 years to a minimum of 4 years and a maximum of 10 years is applicable only in those cases where the prosecution is launched under the provisions of the Lokpal and Lokayuktas Act, 2013 (for short "the Lokpal Act"). This argument is without any merit whatsoever. Section 58 of the Lokpal Act incorporates amendments in other statutes as mentioned in the Schedule. Amendments have been made to the Commissions of Enquiry Act, 1952; the Delhi Special Police Establishment Act, 1946; the Prevention of Corruption Act, 1988; the Code of Criminal Procedure, 1973; and the Central Vigilance Commission Act, 2003. In my view, the amendments made to these five Acts by the Lokpal Act will apply regardless of the fact whether the prosecution has been launched under the Lokpal Act or under the provisions of any other law. I fully agree with my learned Brothers that this submission has no force."

16. Further, it appears that the accused has been languishing in jail hazoot since 22.11.2023. Investigation of the case has also been completed and charge sheet has already been submitted before the learned court below. Moreover, one of the co-accused has already been enlarged on bail by a co-ordinate bench of this court, vide order dated 11.01.2024 in BA No. 4680 of 2023. As held by Hon'ble Supreme Court in the case of **Satinder**

Kumar Antil (supra) where it has been held as under:-

“98. Uniformity and certainty in the decisions of the court are the foundations of judicial dispensation. Persons accused with same offence shall never be treated differently either by the same court or by the same or different courts. Such an action though by an exercise of discretion despite being a judicial one would be a grave affront to Articles 14 and 15 of the Constitution of India.”

17. Having considered above, and also having adjudged the submissions of learned Advocates of both sides and having gone through the materials placed on record and further balancing the period of detention with that of the nature and gravity of the offence this Court is of the view that a *prima facie* case for granting bail to the accused person is made out.

18. Accordingly, it is provided that on furnishing a bond of Rs. 50,000/- (Rupees fifty thousand) only, with one surety of like amount to the satisfaction of the learned **Special Judge, Assam**, accused Aoicharjya Jibon Baruah, shall be enlarged on bail, in connection with the Dibrugarh P.S. Case No. 936/2016, registered under Sections 7/13(1)(a)(b)(d)(2) of the P.C. Act read with section 120-B/420 IPC and added section 463/468/471/477(A)/201 IPC. It is being clarified that the observations, made herein above, is only for the purpose of disposing of this bail application not on the merit of the case.

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

JUDGE

Comparing Assistant