

GAHC010035922024



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

Case No. : Bail Appln./491/2024

LAKSHYA JYOTI DAS
S/O- LATE AKAN DAS, R/O- UNIQUE TOWERS, KHANAPARA, GHY, P.S.
DISPUR, DIST. KAMRUP METRO, ASSAM, PIN- 781022.

VERSUS

THE STATE OF ASSAM
REP. BY THE P.P., ASSAM

Advocate for the Petitioner : TAPAN RANJAN DEURI

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 28.02.2024

Heard Mr. K. N. Choudhury, learned Senior Counsel assisted by Mr. T. Deuri, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 439 of the Code of Criminal Procedure, 1973 praying for grant of bail to the accused/petitioner, who has been languishing in jail hajot in connection with Dispur P.S. Case No. 42/2024, under Sections 120-B/420/ 468/471/409 of the Indian Penal Code.

3. Case Diary has been received. Perused the same. Heard both sides.

4. It is submitted by Mr. K. N. Choudhury, learned Senior Counsel for the petitioner, that the present accused/petitioner was earlier granted with pre-arrest bail in connection with Crime Branch P.S. Case No. 08/2023 and thereafter he was arrested in connection with the present case on 01.02.2024 by the I.O. Initially he was remanded 7 (seven) days police custody till 08.02.2024 and thereafter 2 (two) more days were extended and when he was brought before the learned Special Judicial Magistrate First Class, Kamrup(M) on 10.02.2024, the Investigating Officer prayed for further police remand and accordingly the learned Special Judicial Magistrate First Class, Kamrup(M)

allowed the said prayer and gave 2 (two) more days in police custody. Thus, since 01.02.2024, the accused/petitioner is in custody of police till 12.02.2024 and thereafter, on his production, he was remanded to judicial custody. But, since he has been remanded to judicial custody, i.e. on 12.02.2024, the accused/ petitioner was never interrogated by the I.O. in jail premises in connection with this case. The accused/petitioner specifically and categorically states that he had no role in respect of the alleged fake Sale Deed of Smti Purnima Banjang, bearing Sale Deed No. 6489/76, dated 17.11.1976, which was missing in Volume Book kept in the Office of the Sub Registrar, Kamrup(M), Assam. The then Circle Officer issued the order in the year 2012-13 and the present accused/petitioner, while serving as a Circle Officer of Dispur Revenue Circle, had mutated the plot of land in the name of one Smti Purnima Banjang, but he had no intention to deprive the informant from his property by the said mutation. The alleged mutation was done on the strength of a fake Sale Deed, bearing Sale Deed No. 6489/79, stated to be executed on 17.11.1976.

5. Further, the learned Senior Counsel for the petitioner has submitted that from the statement of the F.I.R. of the instant case, it is seen that the informant earlier lodged an F.I.R. with Dispur Police Station against the present accused/petitioner which was registered as Dispur P.S. Case No. 382/2021 and that apart, the informant also lodged another F.I.R. with the Dispur Police Station, which was registered as Dispur P.S. Case No. 854/2021 for placing forged Sale Deed in connection with the mutation in the name of Smti Purnima Banjang on the basis of forged Sale Deed. Accordingly, the learned Senior Counsel for the petitioner has submitted that the registration of the present F.I.R. is itself illegal and at best it may considered as a statement under Section

162 Cr.P.C. In this context, he also relied on a decision of Hon'ble Supreme Court in **T. T. Antony Vs. State of Kerala & Ors.**, reported in **(2001) 6 SCC 181**, and further emphasized on paragraph 18 of the said judgment, wherein it has been held as under:

"18. An information given under sub-section (1) of [Section 154](#) of Cr.P.C. is commonly known as First Information Report (F.I.R.) though this term is not used in the Code. It is a very important document. And as its nick name suggests it is the earliest and the first information of a cognizable offence recorded by an officer in charge of a police station. It sets the criminal law into motion and marks the commencement of the investigation which ends up with the formation of opinion under Section 169 or 170 of [Cr.P.C.](#), as the case may be, and forwarding of a police report under [Section 173](#) of Cr.P.C. It is quite possible and it happens not infrequently that more informations than one are given to a police officer in charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in [Section 154](#) of Cr.P.C. Apart from a vague information by a phone call or a cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer in charge of a police station is the First Information Report - F.I.R. postulated by [Section 154](#) of Cr.P.C. All other informations made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the First Information Report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under [Section 162](#) of Cr.P.C. No such information/statement can properly be treated as an F.I.R. and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of the [Cr.P.C.](#) It is of course permissible for the investigating officer to send up a report to the concerned Magistrate even earlier that investigation is being directed against the person suspected to be the accused."

6. Mr. Choudhury, learned Senior Counsel, further submitted that while the accused/petitioner was brought before the learned Magistrate after completion of the police remand, he was shown arrest in connection with Gorchuk P.S. Case No. 375/2023 on 12.02.2024 and again arrested in connection with Gorchuk P.S. Case No. 528/2024 on 24.02.2024 without any prior information regarding the

pendency of 2-3 other cases before the Gorchuk Police Station as well as the Dispur Police Station. But the prosecution only disclosed the pendency of the other cases against the present accused/petitioner and accordingly he submitted that it is the duty of the prosecution side or the State Authority to apprise the Court before taking such person into the custody. Accordingly, he relied on a decision of Hon'ble Apex Court passed in **Uday Chand & Ors. Vs. Sheikh Mohammad Abdullah, Chief Minister, J & K & Ors.**, reported in **(1983) 2 SCC 417**, wherein the Hon'ble Apex Court has deprecated the practice of withholding information from the Court about the requirement to arrest the accused in other cases at the time of consideration of bail of the said accused.

7. Accordingly, the learned Senior Counsel further submitted that the entire allegation is based on the documentary evidence and the I.O. has already collected sufficient documents which are in his custody and hence, the question of hampering or tampering with the documentary evidence at this stage also does not arise. Though the accused/petitioner is in custody since 01.02.2024 in connection with this case, but he was never interrogated by the I.O. after he was remanded to judicial custody on 12.02.2024, even if he was subsequently shown arrest in connection with 2 (two) other cases. He further submitted that the wife of the present accused/petitioner is also pregnant and her expected date of delivery is in between 28.02.2024 to 21.03.2023 and considering this aspect also, on humanitarian ground, the accused/petitioner may be enlarged on bail.

8. In this context, Mr. D. Das, learned Additional Public Prosecutor, has

submitted that there are sufficient incriminating materials against the present accused/petitioner showing his direct involvement in the alleged offence and in all the connected cases also, the *modus operandi* is same where the Circle Officer and other staffs and employees of the Office of Sub Registrar are involved. More so, he was absconding for a considerable period though he was subsequently arrested in connection with this case and being an influential person, there is also probability of hampering and tampering with the investigation and accordingly the learned Additional Public Prosecutor raised objection in granting bail to the present accused/petitioner.

9. After hearing the submissions made by the learned counsels for both sides, I have also perused the case record as well as the Case Diary. It is seen that the present accused/ petitioner was under police remand for a considerable period for almost about 12 days and thereafter he was in judicial custody and from the materials available in the Case Diary, it is seen that there was no subsequent prayer made by the I.O. for further interrogation of the present accused/petitioner inside the jail premises after he was brought before the learned Special Judicial Magistrate First Class on completion of his police remand. In connection with the present case, he is in custody for last 27 days and thus, the I.O. got ample opportunity to interrogate the accused/petitioner keeping him in custody. The Case Diary also reveals that there is sufficient progress in the investigation and most of the relevant documents are also seized in connection with this case. Further it is seen from the F.I.R. that 2 (two) other cases were also filed on the same facts and circumstances of this case wherein the allegation of fake registered Sale Deed and mutation was brought by the informant.

10. In view of above, considering the entire circumstances of this case and also considering the view of the Hon'ble Apex Court in the cases of **Uday Chand (supra)** and **T. T. Antony (supra)**, I am of the view that the I.O. has got ample opportunity to interrogate the accused/petitioner keeping him in custody in connection with this case and hence, I find that further custodial interrogation of the accused/petitioner seems to be not necessary here in this case.

11. Accordingly, it is provided that on furnishing a bond of Rs. 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the learned Chief Judicial Magistrate, Kamrup (M), Guwahati, the accused/petitioner, namely, Shri Lakshya Jyoti Das, be enlarged on bail, subject to the following conditions:

- (i) that the petitioners shall fully co-operate with the investigation of the case and shall appear before the Investigating Officer as and when required in connection with the investigation of the aforesaid P.S. Case;
- (ii) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and

- (iii) that the petitioner shall not leave the jurisdiction of the learned Chief Judicial Magistrate, Kamrup (M), Guwahati, without prior permission.

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

The Case Diary be sent back.

JUDGE

Comparing Assistant