

GAHC010001822024



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

Case No. : AB/16/2024

TEJASWINI SACHIN ADHIKARI
W/O- MR. SACHIN 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 MR. JUSTICE ROBIN PHUKAN**

O R D E R

09.01.2024

Heard Mr. R.B. Phookan, learned counsel for the applicant. And also heard Mr. Makhan Phukan, learned Public Prosecutor, Assam for the state respondent

and Mr. K.N. Choudhury, learned Senior counsel, assisted by Ms. R. Kakati, learned counsel for the informant.

2. This application, under Section 438 of the Code of Criminal Procedure, 1973, is preferred by accused/applicant, namely, **Smti Tejaswini Sachin Adhikari**, who has been apprehending arrest in connection with **Fatasil Ambari P.S. Case No.220 /2023, under Sections 120(B)/406/409/419/420/467/468/471/477-A/ 506/34 IPC**, for granting pre-arrest bail.

3. The said case has been registered on the basis of an FIR lodged by one Amit Tipnis, one of the Directors of Britt World Wide India Pvt. Ltd and BWW Global Pvt. Ltd. on 22.09.2023.

4. The essence of allegations made in the FIR, against the present applicant is that she, being one of the de facto promoters and financial controllers, unlawful beneficiaries holding the exclusive authority and financial management of Britt World Wide India Pvt. Ltd. and BWW Global Pvt. Ltd. Company, along with her husband Sachin Adhikari and Sashikant Tadage, with the ill intent of siphoning off the funds from BWW, fabricated documents and issued bills of huge amounts for transferring funds from BWW to as many as nine Shell Companies/Firms of her and her husband such as (i) Viztar International Pvt. Ltd., (ii) SMC Management Consultancy, (iii) Genesis Business Solutions, (iv) Global Vistas Enterprises, (v) Blue Ocean Services, (vi) Gray Matter, (vii) TSA Management Consultancy, (viii) Parth Consultancy Services and (ix) Sai Consultancy, and transferred directly 139 Crores and further they have transferred a sum, amounting Rs.30 to 40 Crores by raising fabricated bills, over invoicing, booking false expenses and thereby defalcated the share of the informant to the tune of Rs.80 to 85 Crores.

5. Mr. R.B. Phookan, the learned counsel for the applicant, submits that the entire transaction is a commercial transaction between two companies the accounts of the Companies was audited and GST was paid. Referring to an order of the Bombay High Court, dated 21.12.2023, in Anticipatory bail Application No. 3585 of 2023, submits that vide aforesaid order Bombay High Court has categorically observed that the genesis of the case is commercial transaction between two parties, and thereafter, the Bombay High Court has granted the applicant transit pre-arrest bail. It is the further submission of Mr. Phookan that the applicant has appeared before the Investigating Officer and she has been co-operating with the investigating agency, and as such custodial interrogation of the applicant may not be required in the interest of investigation. Mr. Phukan further submits that the allegations leveled against the present applicant are false and fabricated and that the applicant is ready to co-operate with the investigating agency and therefore, it is contended to allow the petition.

6. On the other hand, Mr. Makhan Phukan, the learned Addl. P.P., has produced the case diary before this court and vehemently opposed the petition. Mr. Phukan submits that the Investigating Officer has collected sufficient materials against the applicant and that her custodial interrogation is required in the investigation as she has not been co-operating with the investigation though she had appeared before the I.O. on one occasion. Mr. Phukan further submits that this is an economic offence which forms a class apart from other offences and as such no pre-arrest bail can be granted to the accused of such offences as held by Hon'ble Supreme Court in the case of **P. Chidambaram vs. Directorate of Enforcement** reported in **(2019) 9 SCC 24**. Mr. Phukan also submits that the offences are serious in nature and custodial interrogation of the

applicant is indispensable in the interest of investigation and therefore, it is contended to dismiss the petition.

7. On the other hand, Mr. K.N. Choudhury, the learned Senior Counsel has vehemently opposed the petition. Mr. Chaudhury submits that the applicant has not placed before this court the entire materials that have been enclosed with the FIR. Mr. Choudhury further submits that 139 crores of fund of BWW was transferred to the Shell companies owned by her and her husband, by the present applicant in connivance with her husband, who has already been arrested by police and in jail hazoot. Mr. Choudhury also submits that though the Bombay High Court has observed that the transaction is of commercial transaction between the parties, yet entire materials of the case was not available before the Bombay High Court and that the applicant and other accused have made the informant bankrupt by fraudulently transferring the funds and thereafter they have exited from the Company and being the Director, holding 50 of the stake in the companies, now the informant is not in a position even to make payment of salary of the employees of the Company. Therefore, Mr. Choudhury contended to dismiss the petition.

8. Having heard the submission of learned Advocates for both sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary, produced before this Court by the learned Public Prosecutor, Assam, with his assistance. Also I have gone through the case law referred by him. It is to be noted here that in the case of **P. Chidambaram** (supra), the Hon'ble Supreme Court held that grant of anticipatory bail in economic offences would definitely hamper the effective investigation.

9. It is to be noted here that the parameters, to be taken into consideration, while granting or refusing pre-arrest bail is well settled by Hon'ble Supreme

Court in catena of decisions. In the case of **Siddharam Satlingappa Mhetre vs. State of Maharashtra and others**, reported in **(2011) 1 SCC 694**, especially in para 112, Hon'ble Supreme Court had laid following parameters for consideration by the Court:

“122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) The possibility of the applicant to flee from justice;
- (iv) The possibility of the accused's likelihood to repeat similar or the other offences.
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- (vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- (ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal

course of events, the accused is entitled to an order of bail.”

10. In the instant case, the case diary indicates that the I.O. has collected sufficient incriminating materials against the applicants. It also appears that the applicant with her husband Shri Sachin Adikari and Shashikant Tadage were the de facto promoters and financial controllers, of Britt World Wide India Pvt. Ltd and BWW Global Pvt. Ltd. Company. It also appears that she, with her husband and Shashikant Tadage was the unlawful beneficiaries holding the exclusive authority and financial management of the said two Companies. Further, it appears that she along with her husband, has transferred money from the said two companies to their nine Shell Companies, such as (i) Viztar International Pvt. Ltd., (ii) SMC Management Consultancy, (iii) Genesis Business Solutions, (iv) Global Vistas Enterprises, (v) Blue Ocean Services, (vi) Gray Matter, (vii) TSA Management Consultancy, (viii) Parth Consultancy Services and (ix) Sai Consultancy. The way, they have transferred funds from the two companies to the nine Shell companies, it cannot be said that their intention was good. The amount, so transferred is very high and there remains nothing for the informant though he is one the Directors holding 50% of the share of the Companies. Thereafter they have exited from the scene.

11. While keeping the principles, laid down by the Hon'ble Supreme Court in the case of **Siddharam Satlingappa Mhetre** (supra) in mind, the facts and circumstances discussed herein above are examined, this court is left unimpressed by the submission of the learned counsel for the applicant that custodial interrogation of the applicant is not required in the interest of investigation. Besides, there is specific allegation of the Investigating Officer that she has not been co-operating with the investigation. In that view of the

matter, custodial interrogation of the applicant appears to be indispensable in the interest of investigation, to unearth the conspiracy and the persons involved in the same. Moreover, the investigation appears to be in the nascent stage. The offences are serious in nature involving defalcation of huge amount of money.

12. Accordingly, this court is of the considered opinion that this is not a fit case where the privilege of pre-arrest bail can be granted to the applicant. Accordingly, the petition stands dismissed. The case diary be sent back immediately.

JUDGE

Comparing Assistant