

GAHC010064742024



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

Case No. : AB/808/2024

ANOWAR HOSSAIN @ ANOWAR HUSSAIN
SON OF ABDUL KHALEK, RESIDENT OF VILLAGE TANG VITA, PO
MAJERCHAR, DIST DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP ASSAM

Advocate for the Petitioner : MR. P K ROYCHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER

08.04.2024

Heard Mr. P. K. Roy Choudhury, learned counsel for the petitioner. Also heard Mr. K. K. Parashar, learned Additional Public Prosecutor for the State respondent and Mr. Z. Alam, learned counsel for the informant.

2. This is an application under Section 438 of the Code of Criminal Procedure, 1973, praying

for grant of pre-arrest bail to the accused/petitioner, who is apprehending arrest in connection with Dhubri P.S. Case No. 329/2023, under Sections 120(B)/420/ 468/471/467 of the Indian Penal Code.

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

4. It is submitted by Mr. P. K. Roy Choudhury, learned counsel for the petitioner, that this is a subsequent anticipatory bail application seeking pre-arrest bail after the rejection of the earlier anticipatory bail application vide order dated 19.02.2024. He further submitted that the present accused/petitioner is not at all involved in the illegal activity as alleged in the F.I.R. and the entire allegations brought against him are false and fabricated. Further he submitted that the transfer of the shareholder in Sl. No. 2460 of one Jalal Uddin to his son Abdul Karim Sk. was done as per Assam Co-operative Societies Act, 2007 by the Board Of Directors and all the government audit reports under Section 81 of the Assam Co-operative Societies Act, 2007, signed by the Senior Auditor of the Department, also shows that there is no financial mismanagement in the Society. Further it is submitted that the person to whom Share No. 2460 was given is not made an accused by the informant and one Abdul Karim Sk., son of Jalal Uddin, was allotted to Share No. 2460. But the informant, with *mala fide* intention and to mislead the investigation, lodged the F.I.R. only to harass the accused persons. He further submitted that a departmental enquiry was also made in this regard and as per the report from the District Deputy Registrar of Co-operative Societies, Dhubri, the Board of Director has taken resolution on 27.09.2023 and decided unanimously to resolve that the Share No. 2460 is temporary kept in abeyance from getting in service from the Society till any final decision is made over the rights of Share No. 2460 by genuine legal heirs of Jalal Uddin or by the applicant Jalal Uddin, son of Harmuz Ali. It is also observe that the Board of Directors of Geramari Samabai Samity is not able to submit the detail of Abdul Karim Sk., son of Jalal Uddin, whose name is included in the Voter List of 2018, and he has not attended the Society and therefore the Board of Director was directed from the Registrar of Co-operative Societies, Dhubri to take appropriate genuine steps to provide rights of the petitioner Jalal Uddin, who is alive and claiming Share No. 2460 as his share, if Abdul Karim Sk. failed to prove the identification of his father as Jalal Uddin within stipulated time as fixed by the BOD.

5. The learned counsel for the petitioner further submitted that the present enquiry report was not produced before the I.O. nor it was seized by him during investigation, wherein the Share No. 2460 was temporary kept in abeyance from getting any service benefits till it is decided as to whether the claim of the petitioner Jalal Uddin is genuine or as to whether the Abdul Karim Sk. is the son of said Jalal Uddin. More so, all the decisions of transferring the shares etc. were taken by the Board of Directors and not by the present petitioner. Further, the informant never approached before the Board/Samity with any objection in replacing his name from Share No. 2460. He further submitted that after obtaining the interim pre-arrest bail in his earlier anticipatory bail application vide order dated 15.09.2023, he appeared before the Investigating Agency and co-operated in the investigation. His statement under Section 161 Cr.P.C. was also recorded.

6. The learned counsel for the petitioner further submitted that the I.O. cannot bound any person to disclose everything in detail in the name of investigation and the accused has the right to remain silent. However, in the present case, the accused/petitioner already co-operated the I.O. and accordingly his statement is also recorded under Section 161 Cr.P.C. Further, there are sufficient progress in the investigation of this case and all the relevant documents are already been seized by the I.O. in connection with this case and hence custodial interrogation of the present accused/ petitioner is not at all necessary for the purpose of investigation. However, he is ready and willing to co-operate with the I.O. in the further investigation of this case if he is granted with the privilege of pre-arrest bail.

7. In this context, Mr. K. K. Parasar, learned Additional Public Prosecutor, has submitted that there are sufficient incriminating materials collected by the I.O. against the present accused/ petitioner who was discharging his duty as a Secretary to the Geramari Samabai Samity at the relevant time of incident. He further submitted that the present accused/petitioner, being the Chairman, had approved the application made by Abdul Karim Sk. wherein it is shown that the present informant Abdul Jalal died and he being the son of said Abdul Jalal of Share No. 2460

is entitled to transfer the share in his name and accordingly the transfer was made under the Chairmanship of the present petitioner. He further submitted that the matter is still under investigation and the custodial interrogation of the present accused/petitioner may be necessary for the interest of the proper investigation.

8. In this context, Mr. Z. Alam, learned counsel appearing on behalf of the informant, has submitted that he never filed an application for deleting or changing his name as a shareholder of the Geramari Co-operative Society and he never put any signature or thumb impression on any application filed before the Co-operative Society to include the name of his son by deleting his name as shareholder. The present accused/ petitioner along with other co-accused persons with *mala fide* intention has declared the informant as a dead person and transfer his share to one Abdul Karim Sk. against the Share No. 2460. He further submitted that the entire matter was discussed while passing the earlier order rejecting the prayer for anticipatory bail and presently there is no change of circumstances to pass any order on anticipatory bail which was earlier rejected on perusal of the Case Diary. Further he submitted that after the said rejection of the pre-arrest bail, the accused/petitioner has also filed a criminal petition, being Crl. Petn. No. 316/2024, for quashing of the criminal proceeding wherein he also made an interim prayer for passing an order that no coercive action should be taken against the present accused/petitioner till disposal of the said criminal petition. But the said interim prayer was not granted by this Court while passing the order in Crl. Petn. No. 316/2024 and accordingly he raised objection and submitted that this is not at all a fit case to grant the privilege of interim pre-arrest bail to the present accused/petitioner, who in connivance in other co-accused persons have committed the entire crime and entered the name of one Abdul Karim Sk. by deleting the name of the present informant- Jalal Uddin in Sl. No. 2460.

9. After hearing the submissions made by the learned counsels appearing for the parties, I have perused the Case Diary. It is a fact that the name of present informant was deleted and replaced by the name of one Abdul Karim Sk. against the Share No. 2460 and during the relevant time of incident, the present accused/petitioner was discharging his duty as Secretary

of Geramari Samabai Samity under whose Chairmanship the order for deletion of the name of the present informant was passed. The learned counsel for the petitioner mainly stressed on the enquiry report furnished in the departmental enquiry which he annexed as Annexure-14 wherefrom it is seen that the Board of Directors took the resolution on 27.09.2023 to keep the Share No. 2460 in abeyance till the final decision as to whether the claim of the present petitioner is genuine or as to whether the Abdul Karim Sk. can prove that he is the son of Jalal Uddin. But, from the earlier order passed by this Court, it is seen that those materials were also taken into consideration while passing the earlier order and for ready reference, the last portion of the paragraph No. 4 of the order dated 19.02.2024, passed in AB No. 3171/2023 is extracted herein below:

“He further submitted that the District Deputy Registrar of Co-operative Society, Dhubri has also made communication with the District Commissioner, Dhubri and accordingly the BOD was also directed to take appropriate genuine steps to provide rights to petitioner, Jalal Uddin (informant of this case), who is alive and claiming share No. 2460 as his share, if Abdul Karim Sk failed to prove the identification of his father Jalal Uddin within stipulated time as fixed by the BOD. Thus, the share of the informant is still under consideration and hence, there cannot be any question of misappropriation of the share of the informant.”

10. Considering the entire aspects of the case, I find that to unearth some more facts of the case, the custodial interrogation of the present accused/petitioner may be required for the interest of just and proper investigation.

11. The Hon’ble Apex court in the case of **P. Chidambaram Vs. Directorate of Enforcement**, reported in **(2019) 9 SCC 24**, has held that the grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information which might have been concealed. For ready reference, paragraph No. 83 of the said judgment is quoted herein below:

“83. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent-Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail.”

12. Thus, considering the detail discussion made above, it is seen that there is no change of circumstances to consider the present anticipatory bail application and considering the incriminating materials as well as the report of the I.O. and also considering the nature and gravity of the offence, I do not find it a fit case to extend the privilege of pre-arrest bail to the accused/petitioner, after rejection of the earlier AB No. 3171/2023 vide order 19.02.2024, and accordingly the same stands rejected.

13. In terms of above, this anticipatory bail application stands disposed of.

JUDGE

Comparing Assistant