

GAHC010007332024



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

Case No. : Bail Appln./125/2024

AJOY KR SHARMA
S/O GOPAL SHARMA
R/O RATAN NAGAR, CHURU RAJASTHAN
PRESENT ADDRESS- LALGANESH KALAPAHAR, PANCHARATAN
COMPLEX,
BLOCK-C, FLAT -C, P.S. FATASIL AMBARI, KAMRUP (METRO), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A M BORA

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

18.01.2024

Heard Mr. A.M. Bora, learned Senior counsel assisted by Ms. A. Verma, learned counsel for the accused and also heard Mr. R.J. Baruah, learned Additional Public

Prosecutor, Assam, appearing for the State respondent.

2. This application, under section 439 Cr.P.C. is preferred by accused, namely, Ajoy Kr. Sharma, who has been languishing in jail hazot since 23.12.2023, in connection with Dispur P.S. Case No.2497/2022, under Section 420/468/471 of the IPC, for grant of bail.

3. It is to be noted here that the above noted case has been registered on the basis of an FIR lodged by one Punya Prabha Hazarika @ Punya Devi Narayan, on 25.11.2022. The essence of allegation made in the aforesaid FIR is that one Debajit Nath has prepared a fake General Power of Attorney and sold 1 bigha of land belonging to the informant, covering Dag No.401, 400(old)/945(new) under K.P. Patta No.155(old)/233(new) situated at village Dwarandha, Mouza-Beltola, Revenue Circle-Dispur to M/s Balaji Developers, a partnership firm having its office at Sikaria Complex, 2nd Floor, represented by Ajoy Kr. Sharma and Pankaj Biswas, on her behalf, but the informant is totally unaware of the said General Power of Attorney.

4. Mr. Bora, learned Senior counsel for the accused, submits that the accused was arrested on 22.12.2023, and since then he has been languishing in jail hazot for last 27 days. Mr. Bora further submits that while causing arrest of the accused, the I.O. has not complied with the provision of Section 41A Cr.P.C., as required by Hon'ble Supreme Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation & Anr.** reported in **2022 LiveLaw (SC) 577**, wherein it is stated that in case of non-compliance of the aforesaid provision, the accused will be entitled to bail. Mr. Bora further submits that the firm of the accused has purchased the said plot of land from one Debajit Nath, who has already been granted the privilege of pre-arrest bail by this Court in AB No.1770/2023, vide order dated 23.08.2023, and that the accused has purchased the plot of land by a registered sale deed and that the possession was not handed over to him for which he has instituted one Title Suit before the Court of learned Civil Judge, Senior Division, being Title Suit No.1575/2023 and that the accused is innocent and he is not

aware whether the power of attorney produced by accused Debajit Nath is fake or real and he is ready to cooperate with the investigating agency and therefore, it is contended to allow the petition.

5. On the other hand, Mr. R.J. Baruah, learned Additional Public Prosecutor, Assam, has produced the case diary before this Court and submits that the I.O. has collected sufficient incriminating materials against the accused. Mr. Baruah further submits that there is no indication in the case diary as regards the compliance of Section 41A Cr.P.C., but Mr. Baruah submits that the I.O. has added Section 409 IPC here in this case and perhaps because of the addition of said section, the I.O. has not complied with the provision of Section 41A Cr.P.C., as the punishment prescribed for the aforesaid offence is more than 7 years, and therefore, Mr. Baruah has opposed the petition.

6. In reply to the submission of the learned Additional P.P., Mr. Bora, learned Senior counsel for the accused submits that while the accused was arrested, Section 409 IPC was not added and the same was added subsequently and as such, the requirement of compliance of Section 41A Cr.P.C. was there and the same has not been complied with by the I.O. at the time of causing arrest of the present accused and therefore, it is contended to allow the petition.

7. Having heard the submission of learned Advocates for both the sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary with the assistance of Mr. Baruah, learned Additional P.P.

8. It appears that the case diary furnishes material prima facie in support of the allegation made in the FIR, but the materials collected so far in the case diary are not clear as to whether the present accused had the knowledge that the power of attorney was fake or not. Further, it appears that while causing arrest of the accused, Section 409 IPC has not been added and the same was added subsequently and as such, the I.O. was bound to comply with the provision of Section 41A Cr.P.C., in view of the law laid down by

Hon'ble Supreme Court in **Satender Kumar Antil** (supra), wherein it is provided that in case of non-compliance of the aforesaid provision, the accused would be entitled to bail. Further, it appears from the case diary that the accused was arrested on 22.12.2023, and he has been languishing in jail hazot for last 27 days.

9. In the given facts and circumstances on the record and the materials collected so far in the case diary and also due to non-compliance of Section 41A Cr.P.C., this Court is of the view that a prima facie case is made out for granting bail to the accused and accordingly, it is provided that on furnishing a bond of Rs.50,000/- with one surety of the like amount to the satisfaction of the learned Chief Judicial Magistrate, Kamrup(M), the accused, namely, Ajoy Kr. Sharma, be enlarged on bail.

10. In terms of above, this bail application stands disposed of. Case diary be returned.

Sd/- Robin Phukan
JUDGE

Comparing Assistant