

GAHC010010372024



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

Case No.: Bail Appln./167/2024

GOURAV BARUA
S/O LT. BIRAJ BARUA R/O RAJGARH HOUSE NO. 9 BYELANE 6 P.S.
CHANDMARI GUWAHATI PIN 781003 KAMRUP M ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP
ASSAM

Advocate for : MR. A K BHUYAN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

Linked Case No. : Bail Appln./195/2024

PANKAJ DAS
S/O SRI BAIKUNTHA DAS
R/O UZAN BAZAR, KHARGHULI, NEAR BARTHAKUR CLINIC, P.S.LATASIL
GUWAHATI, DIST. KAMRUP (METRO), ASSAM

VERSUS

THE STATE OF ASSAM
THROUGH THE PP, ASSAM

Advocate for the Petitioner : MR. U DUTTA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

30.01.2024

Heard Mr. A.K. Bhuyan, learned counsel for the petitioner. Also heard Mr. K.K. Parashar, learned Addl. P.P, Assam.

This is an application under Section 439 of the Cr.PC, 1973 seeking regular bail for the accused/petitioner, i.e., Gourav Barua, who has been arrested on 09.12.2023 in connection with Geetanagar P.S. Case No. 309/2023 registered under Sections 120(B)/448/468/417/420/406/409 of IPC.

The complainant i.e., Dr. Koumudi Kumar Raychoudhury lodged an FIR on 29.11.2023 stating that his father, late Paramananda Raychoudhury had bought a plot of land in the year 1968 measuring 2 katha 10 lechas under Beltola Mouza No. 1 Japorigog village bearing Patta No.- 63 Dag No.- 485 from Kaliprasad Barua, Bhabani Prasad Barua, Debi Prasad Barua, Radhika Prasad Barua, Satya Prasad Barua, Tara Prasad Barua and Alani Barua vide registered Sale Deed No. 6200 dated 13.07.1968 and by way of mutation by deed registration had also mutated his name in the above mentioned plot of land. It

was further stated that the informant's late father had constructed an Assam Type house in the aforesaid plot of land and had also acquired the electricity connection in his name and after his death, the electricity connection has been transferred to the informant's name. His father expired on 25/12/2001 and after his death, the informant have been looking after the aforesaid plot of land. Since 1968, he had been enjoying his rights over his ancestral property. It was further stated that on 16.12.2022, he was informed by his neighbour that some unknown persons illegally trespassed in his property and started to cut the trees in order to illegally grab the informant's aforementioned plot of land. As the informant was not present in Guwahati that day, he went to Geetanagar Police Station on the next day and lodged an FIR against the person who had illegally grabbed his plot of land, namely Raju Mech, R/o Manalisha Path, Mother Teresa Path, Rajani Enclave. It was further stated that in the Police Station, the informant came to know that Raju Mech is a PWD Contractor and he had brought the aforementioned plot of land from one Mrs. Niva Barua, the then President of Nalbari District vide registered Sale Deed No. 27519 dated 14.12.2022. In the Police Station, the informant also saw the Sale Deed vide which Mrs. Niva Barua had brought the plot of land from Debi Prasad Barua and this Sale Deed is a registered Sale Deed which has been registered in the year 1987 (Sale Deed No. 400). The informant, thereafter had applied for the certified copy of the Sale Deed before the Sub-Registrar Office in Guwahati and after receiving the same, he observed that there were a lot of differences between the certified and the original Sale Deed of Mrs. Niva Barua. In the said deed of 1987 bearing Sale Deed No. 400, the value of the stamp paper has been shown as $200+200+200+100=700$ but on the other hand, the value of the first page of the original Sale Deed of Niva Barua has been shown as Rs.

500/-. As such, he became sure that this Sale Deed is fake. On the other hand, Mrs. Niva Barua had bought the said plot of land in the year 1987 but had done the mutation and partition in the year 2021 and 2022. After the settlement, it is stated that the informant's Dag number has been changed to Dag No. 599 and Mrs. Niva Barua had mutated her name in the said Dag number and had also done the partition and has acquired a separate Patta in the same Dag number. This partition case has been registered (Case No. 34506/2021-22) in Dispur Circle Office and in that partition case, Debi Prasad Barua has been projected as an alive person by the Jarikarak and notice has been sent to him and report has been submitted by him, wherein Debi Prasad Barua had died in the year 2005. It is stated that there were people who has forged the signature of Debi Prasad Barua. Further, it is stated that a great fraud and forgery has been done in the registration case, mutation case, partition case and Deed No. 400, wherein Raju Mech, Mrs. Niva Barua and her son Gourov Barua (accused/petitioner herein) are connected with the fraud. Further, it was alleged that they all together took the benefit of the informant's old age to occupy the informant's land and prevented him from enjoying his rights over his ancestral property.

Accordingly, a case was registered.

Mr. A.K. Bhuyan, learned counsel for the petitioner submits that the accused/petitioner is no way involved in the aforesaid case and that his mother got married in the year 1991 and in the year 1992, the accused/petitioner was born whereas, the alleged Sale Deed is of the year 1987. He further submits that the alleged Sale Deed was between the accused/petitioner's mother and the seller and after the death of his father in the year 2020, his mother handed

over all required documents to him and accordingly, mutation was done in accordance with law. He further submits that the sale permission was obtained by his mother and on the basis of sale permission, the land was sold to the seller and money has been received in the account of his mother.

He further submits that the land belonging to the informant is having Dag No. 596, which is situated in the western border of the scheduled land of the accused mother, whereas, his mother's land is covered by Dag No. 599(O)/4522(N) under KP Patta No. 299(O)/2640(N). He further submits that a civil suit being Title Suit No. 26/2023 is being filed by one Raju Mech on 10.04.2023, making the informant as defendant along with accused/petitioner's mother. He further submits that the allegation against the accused/petitioner is very limited and is only to the extent of helping his mother to get the land mutated in her name and that his mother has already been served with a 41A Cr.PC notice. He further submits that the petitioner has been languishing in jail for last 53 days.

Mr. K.K. Parashar, learned Addl. P.P on the other hand strongly opposes the prayer for regular bail.

He submits on the basis of the Case Diary received that there are sufficient materials implicating the role of the accused/petitioner in the offence alleged and the investigation is at active stage and release of the accused/petitioner on bail at this stage will jeopardize the whole process of investigation. He further submits that if the accused/petitioner is released on bail, the possibility of repeating the same offence of which he is alleged cannot be ruled out and will motivate others to do crime of land grabbing which is rampant in Guwahati.

I have heard the submissions made at the bar and perused the materials available on record including the Case Diary placed before this Court.

It appears from the Case Diary that during the investigation of the case, it could be known that in the year 2021, the custodial arrested involved accused Vimal Bongjang, who usually deals in land related matters to earn commission from buyer or seller had noticed the vacant plot of land located at Hatigorh Chariali, which was used for Scrap-Business that too in a prime location surrounded by many apartments. It further appears that he engaged one of his associate Pradip Bhuyan to identify the actual owner of the plot of land to make proposal for sale of the same with lucrative price. Accordingly, Pradip Bhuyan met Shah Alom who run Scrap-Business in the subject plot of land and came to know from him that the plot of land is in his possession, although the owner is Doctor Kummudi Roy Choudhury (informant herein). It further appears from the statement of the accused Shah Alom that the plot of land was at first given to his uncle Mamtaz Ali in 2005 to run the Scrap- Business @ Rs. 10,000/- per month to the informant. Thereafter, his elder brother Puran Ali run the Scrap-Business from 2011-2014 and from 2014 to 2021, accused Shah Alom was running the business and lawfully he can claim the plot of land as the same is in their family's possession for more than 15 years. It further appears that accused Shah Alom thereafter told Pradip Bhuyan that the said plot of land can be grabbed and sold by preparing fake documents without the consent of the informant and by not letting him enter in his plot of land, who is also old aged simple person and also said that he will take more money if the land is sold as the same is in his possession.

It further appears that the involved arrested accused Pradip Bhuyan shared the cruel idea with his associates viz- 1) Vimal Bongjang, 2) Gourav Barua (accused/petitioner herein) and 3) Sanjay Boro and all of them agreed to go ahead to grab the plot of land and sell the same to earn money. Thereafter, they met Jayanta Dekha (Muhuri, at Sub-Registrar Office) and Biswajit Kalita (Assistant of Jayanta Dekha) and discussed the plan to grab the plot of land and accordingly, Jayanta Dekha told them the need of one fake 'Sale Deed' prior to 1989 i.e. before Land Settlement period to serve the purpose. Then, Jayanta Dekha demanded Rupees 3,00,000/- (Three Lakhs) from them so as to fulfill the task of procuring fake 'Sale Deed' in some of their names and for managing the higher officials of Sub-Registrar Office. Thereafter, the accused persons discussed the name for the fake Sale Deed and realised that Pradip Bhuyan and Sanjay Boro are not local residents of Zoo Road area and Vimal Bongjang being local Karbi guy will also not be able to serve the purpose and Gourav Barua (accused/petitioner herein) is too young to get fit in fake 'Sale Deed' prior to 1989. Then, Pradip Bhuyan suggested the name of Gourav Barua's mother, namely Mrs. Niva Barua for the fake 'Sale Deed' and Gourav Barua (accused/petitioner herein) agreed for the same with a condition to take more money if the land is sold as he is risking his mother's name.

It further appears that Jayanta Dekha managed to prepare one fake Sale Deed vide Sale Deed No. 400 dated 21.2.87, wherein it is noted that Gourav Barua (accused/petitioner herein)'s mother Mrs. Niva Barua purchased the said plot of land from Debi Prasad Barua in the year 1987. Then, Vimal Bongjang who was well acquainted with the officials of the Sub-Registrar Office accompanied by his associates Pradip Bhuyan, Gourav Barua

(accused/petitioner herein), Sanjay Boro, Jayanta Deka (Muhuri, at Sub-Registrar Office) and Biswajit Kalita (assistant of Jayanta Deka) approached Home Guard Pankaj Das of Sub-Registrar Office, Kamrup (Metro) who was posted as Security Guard of Record Room and narrated the plan to grab a plot of land at Hatigarh Chariali and ask for his help with a promise to give him hefty amount for the same and he agreed to help them. Then, after someday, Biswajit Kalita met Pankaj Das and told that he is being directed by Jayanta Deka to tell him to take out the last blank pages of Volume Book No. 09/89 and hand over the same to him. Accordingly, Pankaj Das took out two blank pages of the said Volume Book and handed over the same to Biswajit Kalita and thereafter, the same were handed over to Jayanta Deka outside the Sub-Registrar Office. Thereafter, Jayanta Deka copied the fake Sale Deed No. 400/87 dated 21.2.87 in the blank pages of the Volume Book No. 09/89 and after copying the same in the blank pages, Jayanta Deka directed his assistant Biswajit Kalita to paste the same in the Volume Book No. 09/89 and accordingly Biswajit Kalita pasted the same.

It further appears that as per deal, Vimal Bongjang and his associates met Pankaj Das at Sub-Registrar Office and handed over Rupees 3,00,000/- (Three Lakhs i.e. six bundles of 500 rupee note) in the Office premises near the common toilet in presence of accused Jayanta Deka and accused Biswajit Kalita. Then, after taking the money, accused Jayanta Deka gave Rs.10,000/- (Ten Thousand) to Pankaj Das, Rs. 50,000/- (Fifty Thousand i.e. one bundle of 500 rupee note) to his assistant accused Biswajit Kalita. It further appears from the statement of the accused Jayanta Deka that he also said that he will have to manage Sr. Sub-Registrar Nirhandra Thaosen, Sub- Registrar (A) Ranjit

Choudhury and other staffs to procure certified copy of the fake Sale Deed No. 400/87 dated 21.2.87 and produce the same to Vimal Bongjang and his associates.

It further appears that the involved arrested accused persons took out the certified copy of fake Sale Deed No. 400, dated 21.02.1987 from Sub-Registrar Office by involving Bharat Deka (Peon of Sub-Registrar Office) by bribing him with Rs. 2000/-. Then, on the strength of certified copy of fake Sale Deed, "Mutation" of the mention plot of land was done in the name of Smti Niva Barua (accused/petitioner's mother) at Circle Office, Dispur Revenue Circle. The Lat Mandal Khargeswar Das took Rs. 30,000/- from the accused persons to prepare Field- Visit report and Bhobesh Talukdar (Zarikarok) took Rs. 5000/- for serving notice in the name of Late Debi Prasad Barua in the year 2021, whereas Debi Prasad Barua died in the year 2005. Subsequently, after mutation of the plot of land 'Batuwara' was done in the year 2022 as per due official procedure under taken by the Circle Officer and thereafter, in the same year, the said plot of land was sold to one Raju Mech for Rupees 2,54,00,000/- (Two Crore Fifty-Four Lakhs) out of which accused Shah Alom got Rs. 30,00,000/- (Thirty Lakhs in cash) and Rs. 40,00,000/- (Forty Lakhs in cheque), Gourav Barua (accused/petitioner herein) took Rs. 55,00,000/- (Fifty-Five Lakhs in cash) and Rs. 80,00,000/- (Eighty Lakhs in cheque) Vimal Bongjang took Rs. 35,00,000/- (Thirty-Five Lakhs in cash), Sanjay Boro took Rs. 30,00,000/- (Thirty Lakhs in cash) and Pradip took Rs. 20,00,000/- (Twenty Lakhs in cash). Further, it appears that the cheques bearing No. (013142781211026000160 & 013143781211026000160) amounting Rs. 20,00,000/- (Twenty Lakhs) each which received from Shah Alam arrested Gourav Barua (accused/petitioner

herein) were recovered from his house and accordingly seized in connection with the case.

It further appears that during the investigation of the case, the Investigating Officer visited the Office of the Sub-Registrar, Kamrup (Metro) so as to unearth the facts of the case. It appears that the Investigating Officer by entering the Record Branch officially scrutinized the Volume Book No. 51/68, Volume Book No. 09/89 and Volume Book No. 10/89 and after going through the Volume Books, it has come to light that in the Volume Book No. 51/68 pages No. 113 to 116 are missing. Thereafter, the Investigating Officer collected the authenticated report from Deputy Sub-Registrar, Kamrup (Metro), wherein as per Index Book of 1968, reference of Sale Deed No. 6200 and page No. 113 to 116 are found written. Thereafter, the Investigating Officer scrutinized the Volume Book No. 09/89 and found that in the pages 149 to next page (which is not numbered) the records of Dolil/Sale Deed No. 400/87 were written in the said Volume Book but the ink used to write the same were found to be suspicious, which visibly looked fresh in comparison to the other copied records whose ink faded that were written back in 1987. The records copied in Volume 10/89 were written with the same ink as that of 1987. As such, the Volume Books were sent to the Directorate of Forensic Science Laboratory for expert opinion of the same to unearth the facts of manipulation of the same. Further, the Investigating Officer, by entering the R.K.G (Register Kannan Gou) Branch officially scrutinized the Draft Chitta Book of 1986 and found that the name of Late Parmananda Roychoudhury buying the said plot of land from Kali Prasad Barua is available but the details of Smti Niva Barua (accused/petitioner's mother) buying the said plot of land from Debi Prasad Barua in Draft Chitta

Book of 1987 is not found.

It further appears that during the investigation of the case, the Investigating Officer visited the Office of the Circle Officer, Dispur Revenue Circle and collected the original documents pertaining to official process of Namzari/Mutation of the subject plot of land in the name of Smti Niva Barua (accused/petitioner's mother) and seized accordingly in connection with the case. It is stated that on scrutiny of the same, in the Zamabandi Nama, it has been found that on the basis of the verification report submitted by Lat Mandal Khargeswar Das, the then Circle Officer, Dispur Revenue Circle, Sri Bharat Konwar, ACS, passed an Order vide Mutation Case No. MET/DIS/2021-2022/1976/OMUT/ OMUT-BL. The Mutation was done in the name of Smti. Niva Barua (accused/petitioner's mother) showing her as daughter of Lt. Lakhi Prasad Barua by inheritance, whereas Late Bidadhar Barman was the father of Smti. Niva Barua (accused/petitioner's mother) and as revealed by Gourav Barua (accused/petitioner herein), his mother is not related to Debi Prasad Barua's family. But contradictorily, it appears that in the photostat copy of Dolil/Sale Deed No.400/87, Smti. Niva Barua (accused/petitioner's mother) is shown to have bought the mentioned plot of land from Debi Prasad Barua and not inherited. Further, in the copy of 'Notice' served by Sri Bhobesh Das, Zariarak of Dispur Revenue Circle, it appears that Debi Prasad Barua had received the copy of 'Notice' on 12.01.2022, whereas Debi Prasad Barua died in the year 06.07.2005 which is evident as per Death Certificate of Debi Prasad Barua. Thus, it is evident from the above that the process of mutation of the subject plot of land is doubtful and prepared fraudulently by the involved accused persons by manipulating the actual facts.

It further appears that during the investigation of the Case, the involved accused persons viz - (1) Gourav Barua (accused/petitioner herein), (2) Khargeswar Das (retired Lat Mandal of Dispur Revenue Circle), (3) Vimal Bongjang, (4) Shah Alom, (5) Sanjay Boro, (6) Pradip Bhuyan, (7) Pankaj Das, (8) Bharat Das (Peon of Sub-Registrar Office), (9) Bhobesh Talukdar (Zarikarok of Dispur Revenue Circle) and (10) Nirhandra Thaosen (then Senior Sub-Registrar, Kamrup (Metro) now Deputy Registrar, Nagaon) were arrested in connection with the case and forwarded to Judicial custody. But the involved accused persons viz- (1) Jayanta Deka and (2) Biswajit Kalita who had prepared fake Sale Deed No. 400/87 dated 21.2.87 and manipulated the Volume Book No. 51/68 & Volume Book No. 09/89 to facilitate the crime are absconding to evade arrest.

It is abundantly clear from the materials collected by the Investigating Officer that the accused/petitioner along with the other accused in active collusion with each other managed to fraudulently mutate the subject land on the basis of fake Sale Deed. It appears from the statement of the accused/petitioner that he admits that upon being approached by Vimal Bonjang, they along with the other accused committed the offence alleged and he received Rs. 80 Lakhs by cheque for performing his part of the act. Further, the accused/petitioner's mother Smt. Niva Barua in her statement recorded under Section 161 Cr.PC has also clearly stated that the subject mutation was done by her son i.e., accused/petitioner without her knowledge and a sum of Rs. 80 Lakhs was credited to her account which was later on withdrawn by her son.

The element of criminality *prima facie* is evident. A big land scam appears to have taken place. There are serious and grave allegation of fraudulent property transaction involved. There is a specific role attributed to the accused/petitioner. He along with the other co-acused has committed the alleged offence. Therefore, it is imperative to unearth the truth. The investigation appears to be at an active stage. Article 21 of the Constitution of India is not an absolute right and is subject to the procedure established by law. It is important to maintain a balance between safeguarding individual rights and protecting public interest. Considering that the investigation is at a crucial stage, this Court is not inclined to grant bail to the petitioner at this stage. Accordingly, the bail petition stands rejected.

JUDGE

Comparing Assistant