

GAHC010020242024



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

Case No. : Bail Appln./309/2024

BHABANANDA PATHAK
S/O- LATE SADANANDA PATHAK, R/O- HOUSE NO. 14, KALAPAHAR,
MILAN PATH, P.S. FATASHIL AMBARI, DISTRICT- KAMRUP (M), ASSAM

VERSUS

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

Advocate for the Petitioner : MR. P K ROYCHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

20.02.2024.

Heard Mr. P.K. Roychoudhury, learned counsel for the accused and Mr. R.J. Baruah, learned Addl. P.P. for the State respondent.

2. This application, under Section 439 of the Code of Criminal Procedure, is preferred by accused, namely, **Bhabananda Pathak**, who has been languishing in jail hazoot since 13.01.2024, in connection with **Basistha P.S.**

Case No. 739/2023, registered under Sections 120B/447/420/468/471 IPC, for granting bail.

3. The aforementioned case has been registered on the basis of an FIR lodged by one Dipankar Kalita, on 28.11.2023.

4. The essence of allegations, made in the FIR dated 28.11.2023, is that the present accused, with the help of one Nitul Chandra Das, had prepared forged documents and grabbed a plot of land covered by Dag No. 993 and Patta No.773, standing in the name of his mother, situated at village Saukuchi, under Beltola Mouza.

5. Mr. Roychoudhury, learned counsel for the accused submits that the accused was arrested on 13.01.2024 and since then he has been languishing in jail hazoot. Mr. Roychoudhury further submits that the accused is a retired public servant and he had purchased the land by a registered Sale Deed and got the same mutated in his name after the permission granted by Deputy Commissioner, after due verification and at the time of his arrest the I.O. has not given him any Notice as mandated by section 41A Cr.P.C., as held by Hon'ble Supreme Court in the case of **Satinder Kumar Antil vs. CBI & Another** reported in **(2022) 10 SCC 51**. Further, Mr. Roychoudhury submits that one of the co-accused has already been granted the privilege of bail by this court vide order dated 08.02.2024, in BA No. 117 of 2024, and that he is ready to co-operate with the investigating agency, and therefore, it is contended to allow the petition.

6. On the other hand, Mr. R.J. Baruah, the learned Addl. Public Prosecutor, Assam has produced the case diary and submits that the I.O. has collected sufficient incriminating materials against the present accused and investigation

is still going on and therefore, it is contended to dismiss the petition.

7. Having heard the submissions of learned Advocates of both 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, the learned Addl. P.P.

8. The case diary indicates that the I.O. has collected sufficient incriminating materials in support of the allegation made against the accused in the FIR. But, it appears that he has been languishing in jail hazoot since 13.01.2024. The investigation has also progressed significantly. Besides, it appears that the I.O. has not complied with the provision of section 41 A- Cr.P.C., as mandated by Hon'ble Supreme Court in the case of **Satinder Kumar Antil** (supra).

9. It is to be mentioned here that in the aforementioned case, while drawing summary/conclusion the Hon'ble Supreme Court has held as under:-

“100. In conclusion, we would like to issue certain directions. These directions are meant for the investigating agencies and also for the courts. Accordingly, we deem it appropriate to issue the following directions, which may be subject to State amendments:

100.1. The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.

100.2. The investigating agencies and their officers are duty-bound to comply with the mandate of Sections 41 and 41-A of the Code and the directions issued by this Court in *Arnesh Kumar* [*Arnesh Kumar vs. State of Bihar*, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449]. Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

100.3. The courts will have to satisfy themselves on the compliance of Sections 41 and 41-A of the Code. Any non-compliance would entitle the accused for grant of bail.....”

10. Moreover, one co-accused, namely, Nitul Chandra Das has already been enlarged on bail by this court, vide order dated 08.02.2024, in BA No. 117 of 2024. As held by Hon'ble Supreme Court in the case of **Satinder Kumar Antil** (supra) that persons accused with same offence shall never be treated differently either by the same court or by different courts. Be it noted here that in the said case it has been held as under:-

“98. Uniformity and certainty in the decisions of the court are the foundations of judicial dispensation. Persons accused with same offence shall never be treated differently either by the same court or by the same or different courts. Such an action though by an exercise of discretion despite being a judicial one would be a grave affront to Articles 14 and 15 of the Constitution of India.”

11. Having considered above, and also having adjudged the submissions of learned Advocates of both sides and having gone through the materials collected in the case diary and further balancing the period of detention with that of the nature and gravity of the offence, this Court is of the view that a prima facie case for granting bail to the accused person is made out.

12. Accordingly, it is provided that on furnishing a bond of Rs.50,000/- (Rupees fifty thousand) only, with one surety of like amount to the satisfaction of the learned **Chief Judicial Magistrate, Kamrup (M)**, accused Bhabananda Pathak shall be enlarged on bail, in connection with the **Basistha P.S. Case No. 739/2023**, registered under Sections 120B/447/420/468/471 IPC.

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

JUDGE

Comparing Assistant