

GAHC010066712024



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

Case No. : Bail Appln./982/2024

JAKIR OJAH
S/O LATE HASMOT OJAH
HOUSE NO. 29, OJAH BHAWAN
GANDHIBASTI, MASJID ROAD,
P.S. CHANDMARI
DIST. KAMRUP (M), ASSAM
PIN-781003

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. M K CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

25.04.2024

Heard Mr. M.K. Choudhury, learned Senior Counsel assisted by Mr. A. Mannaf, learned counsel for the accused/petitioner. Also heard Mr. K.K. Parashar,

learned Addl. PP for the State respondent.

2. This is an application under Section 439 of CrPC, 1973 seeking regular bail of the petitioner, namely, Jakir Ojah, who was arrested on 03.03.2024 in connection with Crime Branch Police Station Case No. 03/2024 registered under Sections 120(B)/420/468/471/409 of IPC.

3. The case of the prosecution is that an FIR has been lodged by one Sri Hirendra Nath Sharma on 28.01.2024 alleging *inter alia* that his father purchased a plot of land measuring 1 katha 10 lechas covered by Dag No.1129 and Patta No. 1424 of Ulubari Mouza vide Registration Sale Deed No. 2142 dated 31.08.1950 out of total land measuring 2 bigha 2 kathas and 8 lechas from one Late Hari Kanta Barman.

4. It is the specific case of the prosecution that this land was never sold by the said owner and he expired on 15.01.2000. It is the further case of the prosecution that one Anup Ojah and his brother Jakir Ojah/applicant occupied the said plot of land on 09.01.2009 and later on the informant came to know about it from his neighbours. Accordingly, a case has been registered.

5. Mr. M.K. Choudhury, learned Senior Counsel for the petitioner submits that in the year 2006 one Sri. Utpal Chandra Das approached the FIR named accused Anup Ojah to purchase a plot of land measuring 01(one) Katha covered by Dag No.1129 of Patta No.1424 situated at village Sahar Sarania Part-II under Ulubari Mouza in the District of Kamrup(M), Assam. At the time of such approach, he further told that he is the registered General Power of Attorney holder in respect of the said plot of land vide Deed No.573/06 dated 19-06-2006 being executed by the original land owner namely-Prabhat Chandra Sharma. Accordingly, the FIR named accused Anup Ojah agreed to purchase the said

land on a considerable and agreeable amount of Rs.1,50,000/- (Rupees one lakh fifty thousand) only.

6. The learned Senior Counsel also submits that thereafter the said Power of Attorney holder, Utpal Chandra Das took responsibility for obtaining necessary sale permission and also other formalities for selling land. In due course of time, said Utpal Chandra Das obtained sale permission vide No.KRM-2/2006/272 dated 13-11-2006 from the office of the Deputy Commissioner, Kamrup.

7. The learned Senior Counsel also submits that after obtaining sale permission and also on being paid the considered/agreed sale amount of Rs.1,50,000/- said Power of Attorney holder, Utpal Chandra Das executed a registered sale Deed vide No.15065 dated 30-12-2006 in the office of the Sub-Registrar, Guwahati in favour of the FIR named accused Anup Ojah.

8. The learned Senior Counsel also submits that after execution of the sale Deed vide Annexure-4 above, the FIR named accused Anup Ojah filed an application before the Circle Officer, Guwahati for mutation and accordingly, his name is mutated in the land record vide order dated 13-07-2007 passed by Circle Officer, Guwahati and his name is recorded in the land Jamabandhi. He further submits that the said FIR named accused Anup Ojah has already sold out the said plot of land to one Smti. Mini Ojah, W/O-Sri. Manu Ojah.

9. The learned Senior Counsel further submits that the aforesaid sale transaction took place on 30-12-2006 (Annexure-4) and thereafter, the informant Sri. Hirendra Nath Sharma and his sister Dr. Bharati Sharma instituted a Title Suit being T.S. No.55/2009 in the court of Civil Judge No.3, Kamrup(M),

Guwahati against the present petitioner, FIR named accused Anup Ojah and said Power of Attorney holder namely- Utpal Chandra Das claiming for declaration of right, title and interest, cancellation of Sale Deed recovery of possession and permanent injunction. Thereafter, the learned Civil Court after examining all aspects of the matter was pleased to dismiss the suit of the informant vide judgement and order dated 07-08-2015 observing as "The suit stands dismissed on contest. Considering the facts and circumstances of the case, parties are left to bear their own costs. Draw up a decree accordingly."

10. The learned Senior Counsel further submits that thereafter the informant Sri. Hirendra Nath Sharma and his sister Dr. Bharati Sharma preferred an appeal before Hon'ble Gauhati High Court being R.F.A. No.60/2015 and in the said appeal, notices are issued against the present petitioner, FIR named accused Anup Ojah and said Power of Attorney holder namely- Utpal Chandra Das. Now, the said appeal is pending before this Hon'ble Gauhati High Court for final hearing.

11. The learned Senior Counsel further submits that the present land dispute in between the petitioner and informant is a civil dispute which is in fact, now pending before this Hon'ble High Court in R.F.A. No.60/2015 preferred by the informant. Now, the informant has lodged the instant FIR maliciously with an ulterior motive as to harass the petitioner which is not permissible under law. He further submits that the informant has influenced the Crime Branch Police, Guwahati suppressing the facts of civil cases instituted one after another and now pending before this Hon'ble High Court in R.F.A. No.60/2015 as well as suppression of judgement and order dated 07-08-2015 passed by the learned Civil Judge No.3, Kamrup(M), Guwahati in T.S. No.55/2009.

12. He further submits that the petitioner is totally innocent having no involvement in the offences as alleged in the FIR.

13. Mr. K.K. Parashar, learned APP on the other hand strongly opposes the prayer for bail. He submits that the offence is serious and since the investigation is not complete, the petitioner may not be released on bail.

14. He further submits that though the informant's father expired on 15.01.2000, power of attorney was shown executed on 19.06.2006 in favour of one Utpal Chandra Das in connection with the subject land and on the strength of the aforesaid power of attorney, the current sale transaction of the subject land has been shown to be done.

15. I have heard the submissions made at the bar and I have perused the materials available on record.

16. It appears that the petitioner has been languishing in Jail since last 53 days. It further appears that the applicant was last interrogated on 09.03.2024 and since thereafter he has not been interrogated. It further appears from the materials available in the Case Diary that the investigation has substantially progressed. It further appears that there is nothing adverse with regard to the antecedent of the petitioner.

17. Undoubtedly, the offence is grave. However, the object of the bail is not punishment but to secure the appearance of the petitioner during his trial by reasonable amount of bail.

18. Considering the totality and the fact and circumstances of the case alongwith the length of detention, this Court is of the considered view that further detention of the petitioner may not be justified for the ongoing

investigation.

19. Accordingly, it is provided that the accused/petitioner named above, shall be released on bail on furnishing bail bond of Rs. 50,000/- with one surety of like amount to the satisfaction of the learned Chief Judicial Magistrate, Kamrup (M) under the conditions that:-

(1) That the accused petitioner shall cooperate with the Investigating Officer as and when required; and

(2) That the accused petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Police Officer or the Court; and

(3) That the accused petitioner shall refrain from committing any similar offences in future, of which he is suspected of commission.

20. Return the case diary.

The bail application stands disposed of.

JUDGE

Comparing Assistant