

GAHC010000262024



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

Case No. : Bail Appln./100/2024

BHARAT DEKA
SON OF SUKUNA DEKA, RESIDENT OF POSORIA, DODORA, POLICE
STATION- HAJO, DISTRICT- KAMRUP (RURAL), ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR

Advocate for the Petitioner : MR. K NATH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

30.01.2024

Heard Mr. R. Konwar, 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., Mr. Bharat Deka, who has been arrested on

12.12.2023 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 Teressa Path, Rajani Enclave. It was further stated that in the Police Station, the informant came to know that Mr. 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 of the same, he observed that there are 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 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, 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 are 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 in Deed No. 400, wherein Mr. Raju Mech, Mrs. Niva Barua and her son Gaurov Barua 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 informat's land and prevented him from

enjoying his rights over his ancestral property.

Accordingly, a case was registered.

Mr. R. Konwar, learned counsel for the petitioner submits that the accused/petitioner is not named in the FIR and that he is the Chowkidar in the registration branch of the District Commissioner, Kamrup (Metro). He further submits that the accused/petitioner has no connection with the purchaser of the land and has not committed any offence. He further submits that the accused/petitioner has been languishing in jail since 50 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. He further submits that the accused/petitioner is also named as an accused in connection with Cyber P.S. Case No. 12/2023 registered under Section 120(B)/419/420 of IPC read with Section 66(C) and 66 (D) of the Information and Technology Act.

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 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 that 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, 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 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 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 Deka (Muhuri, at Sub-Registrar Office) and Biswajit Kalita (assistant of Jayanta Deka) and discussed the plan to grab the plot of land and accordingly Jayanta Deka told them the need of one fake 'Sale Deed' prior to 1989 i.e. before Land Settlement period to serve the purpose. Then, Jayanta Deka demanded Rupees 3,00,000/- (three lakhs) from them so as to fulfill the task of procuring fake 'Sale Deed' in some of their name 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 not be able to serve the purpose and Gourav Barua 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 Niva Barua for the fake 'Sale Deed' and Gourav Barua 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 Deka managed to prepare one fake Sale Deed vide Sale Deed No.400, dated-21/2/87 wherein it is noted that Gourav Barua's mother Smti 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, 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 Dekha 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 Dekha outside the Sub-Registrar Office. Thereafter, accused Jayanta Dekha 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 Dekha 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 Jayanta Dekha and Biswajit Kalita. Then, after taking the money Jayanta Dekha 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 Biswajit Kalita. It further appears from the statement of the Jayanta Dekha 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(accused/petitioner herein) (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 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 Shah Alom got Rs.30,00,000/- (thirty lakhs in cash) and Rs. 40,00,000/- (forty lakhs in cheque), Gourav Barua 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 Bhuyan 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 was received by Shah Alom from Gourav Barua 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 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 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 showing her as daughter of Lt. Lakhi Prasad Barua by inheritance, whereas Late Bidadhar Barman was the father of Smit Niva Barua and as revealed by accused Gourav Barua, 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 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, Zarikarak 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 (2) Lat Mandal Khargeswar Das (retired Lat Mandal of Dispur Revenue Circle) (3) Vimal Bongjang (4) Shah Alom, (5) Sanjay Boro (6) Pradip Bhuyan (accused/petitioner herein) , (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 were involved to fraudulently mutate the subject land on the basis of fake Sale Deed. It appears from the statement of the accused/petitioner recorded under Section 161 Cr.PC that he had received a sum of Rs. 5000/- from accused Pradip Bhuyan and gave him a certified copy without applying for the same to facilitate the offence of the subject land grabbing. It further appears that he has admitted his active participation in the offence alleged and is also an habitual offender of the alleged offence.

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-accused 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