GAHC010080932024

2025:GAU-AS:7758

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

Case No. : AB/1038/2024

SRI PULIN SAIKIA
S/O ARUN SAIKIA
RESIDENT OF CD ROAD (WARD NO. 3) PO AND PS AND DIST LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP ASSAM

Advocate for the Petitioner : MS A GOGOI, MR G PHUKAN

Advocate for the Respondent : PP, ASSAM, MR. N J DUTTA,MR W R MEDHI(NAYAN JYOTI DEKA (I/O))

BEFORE

THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioners :Mr. G. Phukan, Advocate.

For the Respondents : Mr. W. R. Medhi, Advocate.
Mr. M. P. Goswami, Adll. P.P.

Date of Hearing : 13.12.2024, 02.04.2025

Date of Judgment & Order : 13.06.2025

JUDGMENT & ORDER(CAV)

1. Heard Mr. G. Phukan, learned counsel for the petitioner. Also heard Mr. W. R. Medhi, learned counsel appearing for the Investigating Officer of Dhakuakhana P.S. Case No. 19/2024 and Mr. M. P. Goswami, learned Additional Public Prosecutor, Assam representing the State of Assam and Mr. N. J. Dutta, learned Amicus Curiae.

2. By this application under Section 438 of Code of Criminal Procedure, 1973, the petitioner, namely, **Pulin Saikia** has approached this Court seeking the benefit of pre-arrest bail, apprehending his arrest, in connection with Dhakuakhana Police Station Case No. 19/2024 (corresponding to G.R. Case No. 23/2024) registered under Sections 420/406 of IPC.

3. In the First Information Report, lodged on 24.02.2024, the petitioner is named as an accused along with one Smti. Pinki Tamuli. In the said FIR, it has, inter alia, been alleged that the accused persons, named in the FIR, along with assistance of 2 (two) other persons opened accounts and received different sums in the name of an organization, Axom Gaonlia Nidhi Limited with the projection that the organization was purportedly a Government approved organization. With the allegation that the money, so received, was not returned with due time, the FIR has been lodged.

4. The petitioner has averred that he is the Chief Executive Officer (CEO) of Axom Gaonlia Nidhi Limited. The contention of the petitioner is that it was never projected that Axom Gaonlia Nidhi Limited is a Government approved organization. It is the contention of the petitioner that the investors were made aware that their investments would be subject to market risks.

5. Considering the nature of allegation made in the FIR, and having regard to the projection made on behalf of the petitioner, a Co-ordinate Bench by its order dated 22.04.2024, granted an interim protection, which is quoted herein below:-

> *"6. Considering the nature of allegations made in the FIR and having regard to the projections made on behalf of the petitioner, it is provided,* ***in the interim and till further consideration is made on the basis of the materials in the case diary to be produced****, that in the event of arrest of the petitioner in connection with Dhakuakhana Police Station Case no. 19/2024, he shall be released on bail on furnishing a bail bond of Rs. 50,000/- with one local surety of the like amount to the satisfaction of the arresting authority, subject to the conditions that :-*
>
> *[i] the petitioner shall appear before the Investigating Officer [1.0.] of the case within a period of 10 [ten] days from today and shall co-operate with the investigation of the case;*
>
> *[ii] the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer; and*
>
> *[iii] the petitioner shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police".***(Eemphasize supplied).**

6. During the pendency of the aforesaid bail application, the petitioner was arrested on 18.05.2024, on the alleged ground that the petitioner has violated the conditions of bail imposed by this Court under its order dated 22.04.2024, by not appearing before the Investigating Officer within 10(ten) days and accordingly, the accused was produced before the learned SDJM, Dhakuakhana. The learned SDJM, Dhakuakhana, on the prayer of the Investigating Officer, sent the accused/petitioner to Police custody.

7. Accordingly, the petitioner preferred an application under Section 439 Cr.P.C., seeking regular bail before this Court, which was registered as BA No. 1473/2024. This Court granted bail to the petitioner under its order dated 22.05.2024.

8. Though, in view of the arrest of the petitioner and his subsequent release on bail, the present application filed under Section 438 Cr.P.C. had become infructuous, however, taking note of the fact that the I.O. was aware of interim protection granted by this Court under its order dated 22.04.2024 and that the next date was fixed on 22.05.2024 and that in spite of such knowledge, the accused was arrested on 18.05.2024 and also taking note of the statements made in Bail Application No. 1473/2024 that the certified copy of order dated 22.04.2024 was shown to the Investigating Officer at the time of arrest of the petitioner, this Court issued a notice to the Investigating Officer, namely, SI Nayan Jyoti Deka to explain his conduct. On receipt of the notice, the said Investigating Officer, has entered appearance and also filed an affidavit.

9. From the affidavit of the Investigating Officer, it is clear that he was aware of the order dated 22.04.2024. In spite of such interim order, according to him, he had arrested the accused person with consent from his superior officer for the reason that, even after serving notice under Section 41(A) of the Cr.P.C., on two dates, i.e., on 29.03.2024 and 25.04.2024, the accused did not appear before the Investigating Officer, however, the fact remains that the interim order was passed by this Court on 22.04.2024.

10. Though, it is the case of the I.O. that the accused has threatened the complainant over social media and through mobile communication, however, there is nothing in the Case Diary nor any specific date or supportive material has been placed by the Investigating Officer.

11. According to the Investigating Officer, the accused person did not appear before

the police station within 10 (ten) days in terms of order dated 22.04.2024, though he had received postal documents on 30.04.2024 from the accused, with a letter that he had official work at Calcutta and as such, he shall not be able to appear within the stipulated period of time. According to the Investigating Officer, the accused has taken a different stand before this Court that he had chickenpox since last week of April 2024.

12. From the aforesaid stand in the affidavit, it is clear that the accused wrote a letter to the Investigating Officer furnishing the necessary documents and sent a communication that the accused is at Calcutta. Thus, the accused gave an explanation for non-appearance. Such communication was admittedly received by the Investigating Officer within 10 days from 22.04.2024, i.e., on 30.04.2024. It is candidly admitted at the para 6 of the affidavit that the Investigating Officer carried out the arrest of the accused person, despite having pre-arrest bail in his favour passed by this Court, solely on the ground that the accused person had failed to comply with the bail condition imposed by this Court under its order dated 22.04.2024 and on the basis of advice and suggestion from the superior authority.

13. The power of arrest of a police officer during the currency of an interim bail, has elaborately been dealt by the Hon'ble Apex Court in **Tusharbhai Rajnikantbhai Shah -Vs- Kamal Dayani & Ors.** reported in **2024 8 SCR 235.** The Hon'ble Apex Court after elaborately dealing with the law relating to grant of anticipatory bail laid down certain principles, which will be taken note of, in the later part of the judgment.

14. In **Tusharbhai Rajnikantbhai Shah** (Supra), the petitioner was granted an interim anticipatory bail by the Hon'ble Apex Court and during currency of such protection, the accused was remanded to police custody by the jurisdictional Magistrate, on the claim of the Investigating Officer, that the petitioner was not

co-operating with the investigation in terms of conditions stipulated in the order granting him interim anticipatory bail.

15. The Hon'ble Apex Court in **Tusharbhai Rajnikantbhai Shah** (supra), in no unambiguous term held that the practice of granting Investing Officers permission to seek police custody/remand of an accused during granting of an interim bail, is in contravention of ratio laid down by the Constitution Bench judgment in **Sushila Aggarwal -Vs- State (NCT of Delhi)** reported in **2020 5 SCC 1.**

16. It was also laid down by the Hon'ble Apex Court in **Tusharbhai Rajnikantbhai Shah** (supra) that even if, the Investigating Officer feels genuine and bonafide requirement of police custody remand of an accused, then the proper course of action would be to move the Court, which granted the interim protection rather than arresting him and moving to the Magistrate by remand application. Such course of action was held to be tainted malicious and contemptuous act on the face of the record.

17. So far relating to grant of remand by the Magistrate during currency of an interim protection granted by a superior Court, it is held that the Magistrate is to apply judicial mind to the facts of the case, so as to arrive at a satisfaction as to whether the police custody remand of an accused is genuinely required. It was also observed that the Court's are not expected to act as a messenger of the investigating agencies and the remand application should not be allowed in routine manner. Relying on the judgment in **Ashok Kumar –Vs- Union Territory of Chandigarh** reported in **(2024) SCC Online SC 274,** the Hon'ble Apex Court, further held merely asserting the need of custodial investigation, is insufficient.

18. Coming to the case in hand, the order dated 22.04.2024, nowhere permits the

Investigating Officer to seek remand in the event of violation of any condition of bail imposed as was in **Tusharbhai Rajnikantbhai Shah** (supra), rather it is an admitted position in the present case that no such permission was granted by this Court in its order dated 22.04.2024. As recorded hereinabove, according to the Investigating Officer, he had arrested the accused for non appearance within 10 days before him, in terms of the order dated 22.04.2024.

19. In the given facts as recorded hereinabove, including the affidavit filed by the Investigating Officer, leaves no room of doubt in the mind of the Court that the interim protection granted on 22.04.2024 to the petitioner was absolute till the case diary is produced and perused. The language of the order was unambiguous and admittedly, the Investigating Officer was aware of such conditions and there was no scope for further interpretation. It was also clear, in the facts of the present case that before expiry of 10 days, within which the petitioner was to appear before the Investigating Officer, the Investigating Officer was informed by the accused/petitioner as regards his inability to appear before him and the next date of the case was fixed on 22.05.2024.

20. In the aforesaid backdrop, if at all the Investigating Officer considered that there is violation of the bail condition, then the proper course of action would have been either to move this Court seeking appropriate direction or to intimate the conduct of the accused to the learned Public Prosecutor, so that the Investigating Officer can pray for rejection of the interim protection granted. The Investigating Officer arrested the accused on 18.05.2024, whereas, the bail application was fixed before this Court for consideration of the case diary on 22.05.2024. In the considered opinion of this Court, such conduct of the Investigating Officer is suggestive of contempt of this Court's order dated 22.04.2024. However, this Court, in the given fact of the present case, more particularly, in the absence of any complaint from the petitioner, has restrained

itself from issuing suo-moto contempt notice. **At the same time, this Court is of the opinion that the Director General of Police, Assam, shall take corrective measures in this regard, inasmuch as, it is the stand of the Investigating Officer that he has arrested the accused on instruction from his superior officers. Accordingly, it is directed that the Director General of Police, Assam shall take note of the incident and do the needful in this regard departmentally.**

21. Now coming to the order of the Magistrate, it is on record of BA No. 1473/2024, that the accused was produced before the learned SDJM (M), Dhakuakhana on 18.05.2024 and by an even dated order, the prayer of Investigating Officer to remand the accused in police custody was allowed for three days.

22. However, later, on the same day, the accused filed a petition being Petition No. 803/2024, with a prayer to release him on bail, primarily citing the order dated 22.04.2024, passed in AB/1038/2024. The learned Magistrate, after quoting the conditions imposed by this Court in its order dated 22.04.2024, observed that the accused has violated the first condition by failing to appear before the Investigating Officer, within ten days from 24.04.2024 and accordingly, the accused was sent to police custody.

23. In the considered opinion of this Court, the learned Magistrate had failed to understand that interim order dated 22.04.2024, was absolute until the case diary is produced and perused or at least till the next date is fixed i.e. on 22.05.2024 and the same was pending for consideration before the High Court and therefore, the learned Magistrate could not have delved into the determination whether the accused has violated any conditions of the order dated 22.04.2024 and could not have remanded the accused to police custody during the currency of the interim order dated 22.04.2024.

24. Accordingly, in the considered opinion of this Court, the Magistrate has failed to apply its judicial mind to the facts of the case, inasmuch as, it could not understand and appreciate the intent of the order dated 22.04.2024, and remanded the accused to the police custody. The learned Magistrate even has not recorded anything as regards the claim of the petitioner. **That being the position, the Magistrate had also failed to perform its duty judicially, and therefore, in the fitness of thing, this Court would ask the Registrar (Vigilance), Gauhati High Court, Guwahati to do the needful to appropriately counsel the learned Magistrate and if necessary, for sending him/her for training.**

25. Taking note of the seriousness of the issue, this Court requested Mr. N. J. Dutta, learned counsel to assist this Court as an Amicus Curiae and Mr. Dutta, ably rendered his assistance in this matter and also put forth certain suggestions as corrective guidelines, so that, such incident does not happen in future, inasmuch as, it is his contention that this kind of incident is occurring very frequently. It is also his contention that in many cases, even if the accused/petitioners, after getting interim protection appears before the Investigating Officers, the Investigating Officers, do not keep any record of such appearance and even do not record the statement of the accused and therefore, the accused/petitioners left with no material even when they appear before the Investigating Officer, in terms of the interim orders.

26. This Court has duly taken note of the submissions made by the learned Amicus Curiae and his suggestions. This Court is also of the opinion that the Hon'ble Apex Court in **Tusharbhai Rajnikantbhai Shah** (supra) and in **Sushila Aggarwal** (supra), infact had laid down certain propositions, which should operate as guidelines as regards the arrest of accused and seeking remand during currency of an interim protection granted by a Court. Accordingly, taking

note of the principles laid down by the Hon'ble Apex Court and also giving due regards to the suggestions made by the learned Amicus Curiae, the following directions are issued:-

(i) During the currency of an interim bail, Investigating Officer(s) should not arrest an accused.

(ii) Even if, the Investigating Officer, feels genuine and bona-fide requirements of police custody of an accused, then, the proper course would be to move the Court, which granted the interim protection, rather than, arresting him/her and moving the Magistrate by a remand application.

(iii) While seeking arrest and remand on the ground of violation of conditions of interim bail, or for that, the accused is not co-operating with the investigation after grant of interim protection, the Investigating Officer shall make a detailed report as regards manners and methods of such non-cooperation/ violation of conditions of bail. Such report may be submitted before the Court, who granted the bail through the Public Prosecutor or an application may be filed for recall of the interim protection.

(iv) As and when, an accused appears before the Investigating Officer, in compliance of conditions of bail, the Investigating Officer, should give an acknowledgment of appearance to the accused and keep the CCTV footage of appearance of the accused, inasmuch as, it is stated at

the Bar that by now, in all the Police Stations in Assam, CCTV cameras are installed in terms of the direction of the Hon'ble Apex Court.

(v) In the event, an interim anticipatory bail granted on a day, which is followed by holidays/vacations and/or the order of the bail, could not be obtained by the accused/petitioner on the same date, the office of the concerned Public Prosecutor, shall communicate the same to the concerned Police Station as regards the grant of anticipatory bail by the Court, subject to the condition, that the counsel for the accused person makes such an application before the concerned Public Prosecutor in writing.

(vi) During currency of an interim protection of anticipatory bail granted by a superior Court, no Magistrate shall entertain any remand application filed by Investigating Officer in absence of any liberty granted to the Investigating Officer by the Superior Court in its interim order to seek remand/arrest for violation of bail conditions. In the event, such condition is available, the Magistrate while taking a decision is to apply its judicial mind to the facts of the case, so as to arrive at a satisfaction as to whether the police custody remand of an accused is genuinely required.

(vii) Registry to circulate a copy of this order to all the District and Sessions Judges and the Magistrates serving within the jurisdiction of the Gauhati High Court.

(viii) Registry also to forward a copy of this order to all the Director General(s) of Police of the States within the jurisdiction of the Gauhati High Court, who in turn, shall circulate it, amongst all his subordinate Police Officers including all the Officer-in-Charges of Police Stations within his jurisdiction, so that the directions issued are duly complied.

(ix) Registry also to furnish a copy of this order to the Public Prosecutor(s), Gauhati High Court and to all the Public Prosecutors of the States under the jurisdiction of the Gauhati High Court through the concerned Sessions Judges and Chief Judicial Magistrates.

27. Accordingly, in terms of the directions issued hereinabove, the present application stands closed. While parting with the record, this Court puts on record its appreciation for the able assistance rendered by Mr. N. J. Dutta, learned Amicus Curiae.

Sd/- Arun Dev Choudhury

JUDGE

Comparing Assistant

True Copy

Administrative Officer (Judl.)
Criminal Appeal Section
Gauhati High Court
Guwahati

Ajay
19-6-25