

**HIGH COURT OF TRIPURA  
AGARTALA**

**A.B. No. 53 of 2021**

**Sri Apu Baidya,**

----- Accused Petitioner(s)

Versus

**The State of Tripura,**

-----Respondent(s)

For Petitioner(s) : Mr. A. Bhattacharjee, Advocate.

For Respondent(s) : Mr. R. Datta, Public Prosecutor.

**B E F O R E**

**HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY**

**ORDER**

**30/07/2021**

This application under section 438 of the Code of Criminal Procedure, 1973 (Cr.P.C for short) has been filed for granting anticipatory bail to the petitioner who is an FIR named accused in Belonia PS case No. 2021/BLN/042 which has been registered for offence punishable under Sections 120B, 420, 409 and 379 read with Section 34 of the Indian Penal Code (IPC hereunder).

[2] Heard Mr. A. Bhattacharjee, counsel appearing for the petitioner. Also heard Mr. R. Datta, learned P.P representing the State respondent.

[3] The factual background of the case is as under:

The Executive Engineer, Santirbazar R.D. Sub Division of South Tripura District lodged the written FIR with the Officer in Charge of Belonia police station on 20.05.2021 alleging, inter alia, that 250 bags cement were issued to Sujit Datta, a technical assistant in the said R.D Sub Division for construction of CC road at Charakbai Gram Panchayat for which work order No.F.11(12)-EE/RD/DIV/MGNREGA/2020-21/13567-72 dated 20.01.2021 was also issued in the name of Sujit Datta. Gate pass, vehicle No. and indent were also issued by the department for transportation release of those cement bags from the departmental store to the work site for execution of the said work. But 200 bags of those cement released from departmental store were recovered and seized from the house of Apu Baidya, the present petitioner who was engaged in the said RD Sub Division as a work assistant. The local people noticed the same when those cement bags were being unloaded in the house of the petitioner. They immediately informed the local panchayat. The Executive Engineer, therefore, sought for police action by filing this FIR.

[4] Based on the FIR, the case was registered and investigation was taken up by police.

[5] While arguing on behalf of the petitioner, Mr. Bhattacharjee, learned counsel submits that accused has been falsely implicated in the case because he had not knowledge as to how the cement bags were taken to his house and under whose instruction. It is contended by the counsel that the whole family of the accused was shifted to a rented house after the construction of his house

building was taken up. As a result no member of his family was present in his house when the cement bags were allegedly unloaded in his house. According to learned counsel, the said cement bags were immediately recovered and seized after unloading and there is no allegation against the accused that he has used a single bag of cement for the purpose of construction of his house building. As a result, charge under section 409 IPC does not survive against him. It is further contended by Mr. Bhattacharjee, learned counsel that prosecution has not been able to make out any case which may justify the necessity of his arrest and custodial interrogation. It is also contended by learned counsel that accused being a government servant, his detention for a single day is likely to spoil his service career which in turn will ruin the lives of the members of his family including the education of his children. Learned counsel, therefore, urges the court for granting anticipatory bail to the petitioner on any condition whatsoever.

[6] Mr. R. Datta, learned P.P on the other hand robustly opposes the bail application. According to Mr. Datta, learned P.P, petitioner is the principal accused of this at whose instance cement bags released for execution of government work were taken to his house for his personal use for the construction of his house building. It is submitted by Mr. Datta, learned P.P that on the similar set of circumstances, anticipatory bail application of co-accused Sujit Datta was rejected by this court by order dated 28.07.2021 passed in A.B No. 51 of 2021. Further contention on behalf of the prosecution is that the accused petitioner was completely aware of the transportation of the cement bags from government store

to his house because the drivers who carried the cement bags to his house have given police statements to the I.O and from their statements it would appear that under his instruction the said cement bags were taken to his house. It is also contended by learned P.P that the investigating agency has collected the call record details between the present petitioner and co-accused Sujit Datta which indicate that they had frequent conversation over telephone during the material time. It is contended that the petitioner is an work assistant in the same office with Sujit Datta and submission of the defence counsel that he had no knowledge about the execution of the work and the release of the cement bags for the said work does not stand to reason. Under the aforesaid premises, Mr. Datta, learned P.P submits that release of the petitioner on pre arrest bail will impair a full and fair investigation of the case. Learned P.P, therefore, urges the court to reject the bail application of the petitioner.

[7] I have considered the submissions of learned counsel appearing for the parties and perused the entire materials placed on record including the updated case diary. The anticipatory bail petition of Sujit Datta, technical assistant was rejected by this court vide order dated 28.07.2021 passed in A.B. No. 51 of 2021 observing as under:

*“[7] I have considered the submissions of learned counsel appearing for the parties and perused the entire materials placed on record including the case diary. The parameters for the grant of anticipatory bail has been elucidated by the Hon’ble Supreme Court in several decisions. In **Jai Prakash Singh Vs.***

*State of Bihar & Anr. reported in (2012) 4 SCC 379 the Apex Court has succinctly held that anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. Observation of the Hon'ble Apex Court is as under:*

*“19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. (See D.K. Ganesh Babu v. P.T. Manokaran & Ors., (2007) 4 SCC 434, State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain, (2008) 1 SCC 213, and Union of India v. Padam Narain Aggarwal, (2008) 13 SCC 305).”*

*[8] In the case in hand, undisputedly the accused is a government servant. It is not disputed that at the relevant time he was a technical assistant in Santirbazar R.D. Sub Division and a work order was issued in his name for construction of CC road in Charakbai Gram Panchayat for which 250 bags of cement were issued and released from the departmental store. The evidence, so far, collected by the investigating agency demonstrate that 200 bags of cement were stored in the house of Apu Baidya, a work assistant of the said R.D. Sub Division where construction of his house building was in progress. Accused has denied his connection with said Apu Baidya but the investigating agency has collected the record of their call details which indicate that there was regular conversation between the petitioner and said Apu Baidya during the material time. It also appears from the record that before lodging the FIR*

*on 20.05.2021 the informant issued notice to the accused petitioner asking him as to why disciplinary action would not be initiated against him. The petitioner responded to the said notice by submitting his reply on 22.05.2021. It appears from his reply that he tried to defend himself by saying that he did not have any knowledge as to how the 200 bags of cement were stored in the house of said Apu Baidya. Since he was entrusted with the execution of the work he cannot shirk off his responsibility by saying that he had no knowledge about the storage and recovery of 200 bags of cement from the house of Apu Baidya. He should have come out with a plausible explanation.*

*[9] I find merit in the submission of learned P.P that custodial interrogation of the accused would be required to ascertain as to whether other officials were also involved in the case.*

*[10] From the aforesaid facts and circumstances of the case and the materials placed on record, this court is of the view that prosecution has successfully made out a prima facie case against the accused petitioner.*

*[11] In view of the nature of the alleged offence and the role played by the accused in the commission of offence and the likelihood of his influencing the course of investigation if released on bail, this court is of the view that it would not be appropriate to provide relief under Section 438 Cr.P.C to the petitioner at this stage of investigation. Accordingly his bail application stands rejected."*

**[8]** Allegation against the present accused petitioner is that 200 bags of cement released from the departmental store for execution of the said work was taken to his house where he was constructing his house building and at the time of unloading those cement bags it was noticed by the local people who



immediately informed the matter to the local panchayat. Thereafter, police recovered and seized the said cement bags from his house. The submission of the counsel of the accused that he had no knowledge about the carriage and unloading of cement bags in his house is not acceptable because the drivers who carried the said cement bags to his house in their police statements recorded under section 161 Cr.P.C has stated that the said cement bags were taken to his house under his instruction. Undisputedly, the petitioner works in the same office along with accused Sujit Datta in the Santirbazar RD Sub Division. The CDR submitted by the investigating agency also indicates that both the accused had close association and during material time they had frequent conversation over telephone with each other. Therefore, petitioner's plea of ignorance about the facts is not acceptable.

[9] From the aforesaid facts and circumstances of the case and the materials placed on record, this court is of the view that prosecution has successfully made out a prima facie case against the accused petitioner.

[10] Moreover, serious charges have been brought against the petitioner which needs a thorough investigation for which custodial interrogation of the accused may be necessary. Therefore, his release on pre-arrest bail is likely to spoil the investigation of the case.

[11] In view of what is stated above, the bail application stands rejected and the petition is disposed of. Return the case diary to Mr. R. Datta, learned P.P.

**JUDGE**

