

GAHC010082462022



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

Case No. : AB/1193/2022

SMT. SANGITA LAHON CHETIA @ SANGITA CHETIA
W/O SHRI MIHIR CHETIA, R/O GANGAPARA NEAR CIRCUIT HOUSE, P.O.,
P.S. AND DIST-DIBRUGARH, ASSAM.

VERSUS

THE STATE OF ASSAM
(NOTICE THROUGH THE PUBLIC PROSECUTOR, ASSAM).

Advocate for the Petitioner : MR. P J SAIKIA

Advocate for the Respondent : PP, ASSAM

Linked Case : AB/1156/2022

MIHIR CHETIA
S/O SHRI HARENDRA NATH CHETIA
R/O GANGAPARA
NEAR CIRCUIT HOUSE
P.O.
P.S. AND DIST. DIBRUGARH
ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP
ASSAM

Advocate for : MR. P J SAIKIA
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

**BEFORE
HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN**

O R D E R

31.05.2022.

Both the petitions are taken up together as these are related to the same case.

By filing these petitions under Section 438 of the CrPC, the two petitioners namely : Smti Sangita Lahon Chetia @ Sangita Chetia (petitioner in A.B. No.1193/2022) and Sri Mihir Chetia (petitioner in A.B. No.1156/2022) have sought for pre-arrest bail in connection with the B.I. (EO) P.S. Case No.03/2020 (corresponding to G.R. Case No.4718/2020), registered under Sections 120(B)/420/406/409 of the IPC.

Heard learned counsel for both sides and perused the record and case diary. Also gone through the bail objection filed by the I.O., against the pre-arrest bail prayer made by the present petitioners.

The FIR, lodged by one Amitabh Banerjee, the Dy. General Manager (posted as the Zonal Manager) of the Bank of India, Guwahati Zone, alleging *inter alia* that Sri Deben Hazarika, the then senior Branch Manager, Dibrugarh Branch had sanctioned and opened various loan accounts in violation of Bank's norms in the year 2018-19 and had also allowed various temporary overdrafts in current accounts beyond his delegated authority. Being influenced by one Dona Das, the then Branch Manager, Bank's Digboi Branch opened four current accounts in the name of Kalpana Sen, Ruma Mazumder, Biswajeet Mazumder and Dipali Mazumder, in utter violation of the guidelines. After opening the said accounts, temporary overdrafts amounting to Rs.3.10 crore was allowed on 19.01.2019, by said Dona Das beyond her delegated authority and the said amount was transferred to the various loan and current accounts of Dibrugarh Branch of the Bank, without any request from the

customers/depositors and cash transfer were also shown from some accounts by the Staff/Officers of the Dibrugarh Branch to close the accounts sanctioned by Deben Hazarika, without any physical movement of the actual cash. Out of the overdraft amount of Rs.3.10 crore, Rs.2.01 crore has already been recovered and credited back to the current account of the Digboi Branch.

It is further alleged in the FIR that, said Deben Hazarika, in violation of the Bank's procedure during 2018-19, opened various loan accounts and temporary overdrafts were sanctioned to the present two petitioners and to some other loanee and it was also found that ultimate beneficiary of the proceeds of the said temporary overdrafts would be the present two petitioners and for that reason, the temporary overdrafts were allowed in the four current accounts of the Digboi Branch, without any request from the depositors/ customers and funds were transferred to various irregular loan accounts of Dibrugarh Branch. The Bank had classified the said accounts as fraud and accordingly reported the matter to the RBI on 30.04.2019. As per the informant, said Deben Hazarika and Dona Das, along with the present petitioners and some unknown persons, by entering into a criminal conspiracy, has committed the act of cheating, forgery and criminal breach of trust.

The present two petitioners, in relation, are husband and wife. They pleaded in their bail petitions that they are customers of the Bank of India for several years and currently they have three accounts operating in the Bank: one is current account, one is car loan account and another is savings account. In the year 2018, when the present petitioners were in urgent need of money, they approached the Bank and sought for financial assistance and after following all the necessary formalities, the Bank sanctioned seven loan in their favour and after availing the loans, they also deposited money in the said loan accounts and as such the loan accounts were under operation. But on 19.01.2019, various amounts were credited in their loan accounts and thereafter the accounts were closed which they came to know only on 26.01.2019, when the petitioners were informed by the Bank authority.

According to the petitioners they never deposited such a huge amount at a time in order to close said loan accounts. With regard to deposit of such a huge amount of money in their loan accounts, an enquiry was made by the Bank and it was detected that the Bank Officials of Digboi Branch had committed some irregularities in transactions, which resulted in some

wrong deposits in the accounts of some customers and the petitioners were asked to refund the amount credited in their accounts. As it was not possible on the part of the petitioners to return the said amount, they requested the Bank to return the amount which were wrongly transferred to the loan accounts. In this regard, a series of discussions were held between the Bank and the petitioners but the Bank authorities projected their administrative difficulties to retrieve the said amount and requested the petitioner to deposit the same in installments. Thereafter the petitioners deposited an amount of Rs.51,81,800/- and by submitting a representation on 01.02.2019, undertook to deposit the full amount. Similar representation was also submitted by one of the petitioner before the Vigilance Officer of the Bank, vide representation dated 20.02.2019 and they sought for sufficient time to make repayment of the loan amount.

Heard the submission of learned counsel for the petitioner and also the learned Addl. P.P., Assam and gone through the case diary.

The I.O. has also submitted bail objection.

On perusal of the case diary as well as the report/objection given by the I.O., it reveals that various loan accounts were opened in the Dibrugarh Branch of Bank of India, in violation of Bank's norms, system and guidelines by the senior Branch Manager of the Bank, Mr. Deben Hazarika during 2018-19 and allowed various temporary overdrafts in fourteen (14) accounts, beyond his jurisdiction. To set right the irregular finance made, said Deben Hazarika, on 19.01.2019, influenced Mrs. Dona Das, the Branch Manager of Digboi Branch to open four current accounts, in the name of one Samarjit Mazumdar, who was working as casual worker in Dibrugarh Branch. Those accounts were opened without obtaining fresh KYC documents, signature of depositors and initial deposit, in violation of Bank's Accounts Opening Guidelines. After opening these accounts, temporary overdrafts of Rs.3.10 crore was allowed on 19.01.2019, by Mrs. Dona Das, beyond her delegated authority and said amount was thereafter transferred to 14 various loan and current accounts of account holders of Dibrugarh Branch of the Bank, including the petitioners.

In the aforesaid manner, the then two Branch Managers of the Bank of India, namely Sri Deben Hazarika and Mrs. Dona Das along with the present petitioners and some others, with

dishonest intention to cause wrongful loss to the Bank and for their wrongful gain, fraudulently in furtherance of their common intention by entering into a criminal conspiracy, committed the act of cheating, forgery and criminal breach of trust.

In his statement, co-accused Samarjit Mazumdar reveals that Sri Deben Hazarika, the then Branch Manager, Dibrugarh Branch had opened various loan/current accounts in the name of present two petitioners and sanctioned/allowed temporary overdraft/loan etc. to those accounts without any security documents and the Manager had a very good relation with the present accused petitioners.

The materials surfaced during investigation suggested the complicity of both petitioners with the offence alleged.

In view of all above, this Court is of the opinion that it is not a fit case, to grant the privilege of Section 438 of the CrPC, to the present accused/petitioners and accordingly their bail prayer stands rejected.

Return back the case diary forthwith.

JUDGE

Comparing Assistant