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

Case No. : Crl.Pet./399/2022

THE STATE OF ASSAM AND ANR.
REP. BY THE I SRI DIGANTA BARAH, AGED 46 YEARS, S/O LT. JONARAM BARAH, PRESENTLY WORKING AS COMMISSIONER AND SECRETARY, GOVT. OF ASSAM, HOME AND POLITICAL DEPTT. DISPUR-6

2: BIPUL CH. KALITA
S/O LT. MADHAB KALITA
SUB INSPECTOR OF POLICE (INVESTIGATION OFFICER)
BARPETA DEF
P.S. BARPETA ROAD
DIST. BARPETA

VERSUS

JIGNESH MEVANI AND ANR.
S/O NATVARLAL PARMAR PRESENTLY RESIDING AT VILL- 104 CHUVAL NAGAR PART-II, BHARGAV ROAD, MEGHANI NAGAR, AHMEDADBAD, PIN-380016 GUJRAT

2: DEBIKA BRAHMA
AGED ABOUT 31 YEARS
D/O KRISHNAKANTA BRAHMA
R/O VILL. KUMOI KACHARI GAON
P.S. JAGIROAD
P.O. JAGIBHAKAT GAON
MORIGAON
ASSA

Advocate for the Petitioner : MR. D SAIKIA

Advocate for the Respondent :



**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 02.05.2022

Heard Mr. D Saikia, learned Advocate General assisted by Mr. P Nayak, learned counsel.

At the outset the Advocate General submits that the name of the petitioner No.2 may be struck off as the petitioner No.2 can initiate a separate proceeding against the said impugned order dated 29.04.2022.

Let notice be issued, returnable by 27.05.2022.

Steps upon the respondent Nos.1 & 2 by Registered Post with A/D as well as through usual process within 06.05.2022.

The petitioner is also at liberty to take steps upon the respondent by way of *dasti service*.

I have heard the learned Advocate General as regards the impugned order and he submits that the learned District Judge while exercising the jurisdiction under section 439 Cr.P.C. which were primarily for the purpose of granting or refusing the bail, have made certain observations and remarks as regards the entire Police force of Assam, which is not only demoralizes the police force but also casts aspersion upon the police force.

He further submits that those observations so made needs to be stayed by this Court, or else it would have a cascading effect on the morale of the Assam police as well as the State of Assam.

Upon perusal of the order dated 29.04.2022, it reveals that the learned Sessions Judge while dealing with an application under section 439 Cr.P.C. had made certain observations to the effect which had no relevance to the consideration of the bail application. The relevant part of the said observation is reproduced below:

“In view of the above and to prevent registration of the

false FIR like the present one and to give credibility to the police version of occurrences like the arrest of accused persons and the accused persons attempting to escape from police custody in the midnight, while the accused was allegedly leading the police personal to discover something and the police personnel firing and killing or injuring such accused, which has become a routine phenomenon in the State, the Hon'ble Gauhati High Court may perhaps consider directing the Assam police to reform itself by taking some measures like directing each and every police personnel engaged in law and order duty to wear Body cameras, to install CCTV cameras in vehicles while arresting an accused or taking an accused to some place for discovery of some articles and for such other reasons and also to install CCTV cameras inside all the police stations. Otherwise our state will become a police state, which the society can ill afford. Even opinion is growing in the world for providing next generation human rights to the police in the democratic countries like, right to recall an elected representatives, right to destabilize an elected government etc., therefore converting our hard earned democracy into a police state is simply unthinkable and if the Assam police is thinking about the same, the same is perverse thinking."

These observations were made without there being any materials on record, on the basis of which the learned Judge could have made such observations and consequently, this Court stays the above quoted observations until further orders.

Further to that, the findings arrived at by the learned Sessions judge in the impugned order to the effect that the testimony of the victim shows that the case has been manufactured for the purpose of keeping the accused Sri Jignesh Mewani for a longer period abusing the process of the Court and the law. These findings are also prima facie beyond the exercise of the jurisdiction of the Sessions Court in a proceeding under Section 439 Cr.P.C. and accordingly the said observation is also stayed.

It is clarified that the instant order may not be construed in any



manner as a stay to the grant of the bail by the learned Sessions Judge in his order dated 29.04.2022 in CrI. Misc. Bail Application No.257/2022 in Barpeta Road P.S Case No.81/2022. The State of Assam through its P.P. shall be at liberty to challenge the said order dated 29.04.2022 in an appropriate proceedings, if so advised.

List accordingly.

Self. Devaship Baruah

JUDGE

4 02.05.22

Comparing Assistant

WWW.LIVELAW.IN

CERTIFIED TO BE TRUE COPY
Newman Gungma
D: *2/5/2022*
A:)
C:)
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Authorised U/S 76, Act 1, 1872