

GAHC010000042023



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

Case No. : Bail Appln./3/2023

SHAHIDUL ISLAM AND 3 ORS
S/O SUKUR ALI
R/O VILL- KAYAKUCHI
BHOKUAMARI
P.S. AND DIST. BARPETA, ASSAM

2: AMINUL HAQUE @ AMIN
S/O AHMED ALI
R/O MADHYA
BHOKUAMARI
P.S. AND DIST. BARPETA
ASSAM

3: HANIFUR RAHMAN
S/O LATE AJIJUR RAHMAN
R/O VILL- SONAPUR PATHAR
P.S. SONAPUR
DIST. KAMRUP (METRO)
ASSAM

4: LOTFOR RAHMAN @ ROCKY
S/O ABUL KALAM
R/O VILL- KAYAKUCHI BHOKUAMARI
P.S. AND DIST. BARPETA
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR N AHMED

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER**

19.01.2023

Heard Mr. N.J. Dutta, learned counsel for the accused and Mr. B.B. Gogoi, learned Additional Public Prosecutor for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused, namely, Shahidul Islam; Aminul Haque @ Amin; Hanifur Rahman; and Lotfor Rahman @ Rocky, who are shown arrested here on 28.12.2022, in Hatigaon P.S. Case No. 395/2022, under Sections 406/420/379 of the IPC read with sections 66[C]/66[D] of the IT Act, for granting bail.

3. The said case has been registered on the basis of one FIR lodged by one Samarendra Basumatary, on 17.08.2022, to the effect that on the same day at about 9.18 am he went to withdraw some money from SBI ATM at Ghoramara Chariali and withdraw a sum of Rs. 9,000/- and while he checked his mini statement, then three unknown miscreants entered the ATM booth and fraudulently exchanged his ATM card and left another ATM card with him and later on, he came to know that a sum of Rs. 1,31,000/- was withdrawn from his account.

4. Mr. Dutta, learned counsel for the accused persons submits that the accused persons were arrested earlier in connection with Hatigaon PS Case No. 466/2022, under sections 420/379 of the IPC read with section 66 of the IT Act and Hatigaon PS Case No. 472/2022, under sections 420/379 of the IPC read with sections 66[C]/66[D] of the IT Act and they have been shown arrested here in this case on 28.12.2022, and since then they have been languishing in jail hazot. Mr. Dutta further submits that the

accused persons are innocent and no way involved in this case and they are shown arrested here in this case only on suspicion and they are ready to cooperate with the investigation agency, and therefore, it is contended to allow the petition.

5. On the other hand, Mr. Gogoi, learned Additional Public Prosecutor has produced the case diary before this Court and submits that the materials so far collected in the case diary are inadequate to show the complicity of the accused persons with the present case.

6. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the Case Diary with the assistance of Mr. Gogoi, learned Additional Public Prosecutor.

7. In view of the materials so far collected in the case diary, and also in view of the submissions so advanced by the learned counsel for both the parties and their period of detention, their further custodial detention seems to be unwarranted here in this case. And accordingly, it is provided that on furnishing a bond of Rs. 25,000/- (Rupees twenty five thousand) only, each, with one surety of like amount to the satisfaction of the learned Chief Judicial Magistrate, Kamrup (M) at Guwahati, the accused persons be enlarged on bail.

8. In terms of above, this bail application stands disposed of.

9. The case diary be returned.

JUDGE

Comparing Assistant