GAHC010015432023

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

Case No. : Bail Appln./284/2023

HANIFUR RAHMAN AND 3 ORS
S/O LATE AJIJUR RAHMAN
R/O SONAPUR PATHAR

P.S. SONAPUR
DIST. KAMRUP (METRO)
ASSAM

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

3: LOTFAR RAHMAN @ ROCKY
S/O ABUL KALAM
R/O KOYAKUCHI
BHAKUAMARI
P.S. AND DIST. BARPETA
ASSAM

4: SAHIDUL ISLAM
S/O SUKUR ALI
R/O KOYAKUCHI

BHAKUAMARI
P.S. AND DIST. BARPETA
ASSAM
VERSUS

THE STATE OF ASSAM
REP. BY THE PP
ASSAM

Advocate for : MR N AHMED
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 13.02.2023

Heard Mr. N. J. Dutta, learned counsel for the petitioners. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 439 of the Code of Criminal Procedure, 1973, praying for grant of bail to the accused/petitioners, who have been languishing in jail hazot since 16.10.2022 and shown arrested on 19.01.2023 in connection with Hatigaon P.S. Case No. 393/2022, under Section 379 of the Indian Penal Code.

3. It is submitted by the learned counsel for the petitioners, Mr. N. J. Dutta, that the present petitioners are shown arrested on 19.01.2023 and forwarded in connection with this case, though all the accused petitioners are behind the bar since 16.10.2022, and they were shown arrested in as many as 11 (eleven) numbers of cases where all the accused petitioners are already enlarged on bail. But, subsequently, on the strength of the present F.I.R. as well as 4 (four) numbers of other F.I.Rs., they have again shown arrested in connection with this

case. They are behind the bar since 32 days in connection with this case and hence the I.O. has got sufficient opportunity to interrogate the accused petitioners keeping them in custody and therefore further custodial interrogation is not at all necessary.

4. The learned counsel for the petitioners further relied on a decision of this Court in **Dr. A. Loso Vs. The State of Manipur**, reported in **1987 2 GLR 292**, wherein, it has been held that "Duty of the police to disclose the particulars of pending case or cases of the accused, in which he has not yet been arrested, to the Magistrate before whom he is forwarded on arrest in a particular case or to disclose such particulars at any time before the accused is enlarged on bail – Such report necessary in order to safeguard the liberty of the citizens from the harassment of repeated arrests – On facts, direction issued to the Officer-in-Charge of the Police Station to disclose all such particulars against the petitioner."

5. Further it is submitted by the learned counsel for the petitioners that the present accused petitioners are being shown arrested in as many as 11 (eleven) numbers of cases where they were already enlarged on bail and subsequently they have been shown arrested on the strength of the present F.I.R. as well as 4 (four) others. So, in view of the order passed by the Division Bench of this Court, the present accused petitioners are also entitled to bail and considering their length of detention, they should be enlarged on bail.

6. Mr. P. Borthakur, learned Additional Public Prosecutor, has submitted, in this regard, that the F.I.R. of the present case has been lodged prior to the arrest of the accused petitioners and coming to know about the pendency of the

case, they were being shown arrested in connection with this case. From the materials in the Case Diary, it reveals that in the pretext of helping the elderly persons, they have withdrawn the money from the bank account of the elderly persons. Further, the materials in the Case Diary discloses as to how the present accused persons were involved in the alleged offence and how the money were withdrawn from the bank account of the victims. The I.O. also able to procure the CCTV footage and the photographs which clearly establishes the involvement of the present accused petitioners in committing the offence as alleged in the F.I.R. They not only misappropriated the money or withdrawn the money from the bank account of the persons, but also cheated some other similarly situated persons, like petrol depot owners etc., in committing the offence. The learned Additional Public Prosecutor further submitted that the length of detention cannot be the only criteria to grant bail for these accused/petitioners who are veteran criminals and were engaged in committing similar kind of offence and already cheated many poor/elderly persons. From the submissions of the learned counsel for the petitioner, it also reveals that this is not the only case where the accused/petitioners were forwarded by the concerned police station, but various cases are being registered against these accused petitioners, wherein also they involved in committing similar kind of offence where they looted money from the general public. They are associated with the ATM fraud syndicate and they are habitual offender and hence, to nab the other culprits involved in this case and also for the interest of the just and proper investigation, their further custodial interrogation may be necessary and accordingly the learned Additional Public Prosecutor raised objection in granting bail to the present accused petitioners.

7. After hearing the submissions of learned counsels of both sides, I have perused the Case Diary and it is seen that the I.O. has collected sufficient incriminating materials against the present accused/petitioners showing their direct involvement in the alleged offence. More so, the I.O. also filed bail objection and stated that the present accused/petitioners are the prime accused and they are involved in the ATM fraud by exchanging ATM Cards and looted money from general public. During investigation, it also reveals that they played important role in ATM fraud syndicate and they are the habitual offender of such crime. They are the gang of 4 (four) numbers who are involved in ATM fraud syndicate and during investigation, they revealed as to how they were withdrawing money and cheated the poor victims by exchanging their ATM Cards. Further it reveals from the materials collected by the I.O. that the accused/petitioners were involved in withdrawing money by changing their ATM Cards in the pretext of helping them and they also used POS Machine to transfer money from the ATM Cards which they collected by cheating the masses of people.

8. So, from the materials available in Case Diary as well as from the bail objection filed by the I.O., it is seen that all the accused/petitioners are veteran criminals and they are committing similar kind of offence by cheating the people and withdrawing the money by exchanging ATM Cards and thus they are involved in ATM fraud syndicate and also looted money from the victims in the pretext of helping them in withdrawing money from their ATM Cards. It is admitted that in the forwarding report of the present accused/petitioners and also in the prayer made before the learned Magistrate for shown arrest, the I.O. has not disclosed the numbers of all the pending cases against the accused

petitioners, but prayed for shown arrest of the present accused/petitioners showing their involvement in connection with the other case where they are presently shown arrest. Admittedly, it is a lapse on the part of the I.O. as he could not disclose all the pending cases of the present accused/petitioners while praying for shown arrest of the present accused/petitioners. But, considering the nature of involvement of the present accused/petitioners and also considering the gravity of the offence and the other aspects of the case, I find that release of the present accused/petitioners in connection with this case may hamper or tamper further investigation of the case and in the same time, their custodial interrogation may be necessary to nab other culprits which are involved in the entire fraud syndicate of ATM Cards.

9. So, from the discussions made herein above and also considering the view of this Court in **Dr. A. Loso (supra)**, I hereby direct the concerned I.O. to disclose the numbers of pending cases, if any, before the concerned Magistrate immediately and also hereby direct to disclose the list of any other pending cases where the accused/petitioners are not arrested or yet to be arrested. It is also admitted fact that all the accused/petitioners are behind the bar for a considerable period as they were shown arrested for numbers of cases, but the accused/petitioners cannot be released on bail only considering the length of detention and accordingly, I find that further custodial interrogation of the present accused/petitioners may be necessary for the purpose of just and proper investigation of the case and hence, I do not find it justified to allow the accused/petitioners on bail at this stage and accordingly the present bail application stands rejected.

The Case Diary be sent back.

JUDGE

Comparing Assistant