

GAHC010032792023



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

Case No. : AB/460/2023

MUSABBIR HUSSAIN AND ANR
S/O ABDUL JALIL
R/O TATIKATA
P.S. MOIRABARI
DIST. MORIGAON, ASSAM

2: MUSTAFIZAR HUSSAIN
S/O ABDUL JALIL, R/O TATIKATA,
P.S. MOIRABARI, DIST. MORIGAON
ASSA

VERSUS

THE STATE OF ASSAM, REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. Y S MANNAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 09-03-2023

Heard Mr. Y. S. Mannan, learned counsel for the petitioners and Mr. B. Sarma, learned Addl. P.P. for the State respondent and also Mr. R. Dey, learned counsel for the informant

2. This is a second bail application made under Section 438 Cr.P.C. seeking pre-arrest bail by Musaabbir Hussain and Mustafizar Hussain in connection with Moirabari P.S. Case No. 241/2022 u/s 120(B)/406/419/420/468/471 IPC read with Section 66(C)/ 66(D) of the Information Technology Act,2000(I.T.Act).
3. This court by order dated 30.1.2023 passed in A. B. 14/ 2023 rejected the prayer for grant of anticipatory bail after perusal of the case diary and on the basis of finding that two petitioners who are brothers were prima facie involved in the offence inasmuch as loans were sanctioned in other person's name by impersonation and sanctioned loans were transferred to the account of the petitioner No.2.
4. Mr. Mannan while submits that FIR itself discloses that the offence relates to cyber fraud by use of fake KYC images /information on digital platform and that reading of the FIR shall reveal that initially the informant company made an in-house enquiry during the month of November, 2022 and lodged the FIR after a month i.e. 15.12.2022. He further contends that the FIR itself discloses that there is no actual financial loss but a risk of loss of money in view of the alleged offences. Therefore, on the basis of such vague allegation, the petitioner should not be detained.
5. Taking to the Section 66 C and Section 66 D of Information Technology Act, 2000, Mr. Mannan submits that since the FIR itself reveals a cyber offence, the same shall be covered under the provision of Information Technology Act, 2000 more particularly Section 66 C and Section 66 D in the backdrop of allegation and both the sections are bailable.

6. Mr. Mannan learned counsel relying on the judgment of the Hon'ble Apex Court in the case of ***Sharat Babu Digumarti Vs. Government (NCT of Delhi)*** reported in ***(2017) 2 SCC 18*** contends that once a special provision is incorporated in a special Act the special provision shall have overriding effect to cover a criminal Act and the offender gets out of the net of IPC inasmuch the FIR in the present case, itself reveals an offence which relates to cyber crime and therefore, the petitioner should not be deprived of his right to bail as granted u/s 66 C and 66 D of the I. T Act .
7. Per contra, Mr. Sarma, learned Addl. P.P. submits that the case diary reveals that there are allegation and sufficient materials of commission of offence of forgery of documents. Though the FIR discloses it to be a cyber offence, however during the course of investigation it is found to be a case under Sections 467 of IPC and therefore in the given facts of the present case the judgment relied on by Mr. Mannan shall not be applicable.
8. I have given anxious considerations to the submission advanced and also perused the case diary. The case diary reveals that the informant bank has sanctioned a substantial amount of loan in the name of one Hardip Singh and one Bikram Singh on their application and such amount were disbursed to the bank account to the said loanee in the Bandhan Bank. After in-house investigation the bank could learnt that the account in the name of Hardip Singh was created by pasting a photograph of present petitioner No.1 and such loan were disbursed in the account, which belongs to the accused No.2. Not only that a total amount of Rs.

23,58,419/- were transferred in the account which is in the name of brother of the present informant and those loans were sanctioned in the name of different persons and photos were given of these two brothers, while opening the loan account.

9. In that view of the matter, this court is of the prima facie view that it is suggestive of forgery and therefore this court is not inclined to take a different view that has been taken in the earlier order dated 30.1.2023 in A. B. No.14/2022.
10. Coming to the argument of Mr. Mannan so far relating to Section 66 C and 66 D and the judgment of the Hon'ble Apex Court in ***Sharat Babu Digumarti*** (supra), this court is of the view that in the given fact of the present case, those proposition of law will not be applicable inasmuch as the materials so far collected reveals the ingredient of Sections 467 and 120 IPC.
11. In that view of the matter, the bail application stands rejected.

Case diary be send back.

JUDGE

Comparing Assistant