

GAHC010097202023



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

Case No. : Crl.Pet./434/2023

THE STATE OF ASSAM AND ANR
REP. BY COMMISSIONER AND SECRETARY, GOVT OF ASSAM, HOME AND
POLITICAL DEPARTMENT DISPUR-6.

2: SUPERINTENDENT OF POLICE

BARPETA NAMELY MR AMITAVA SINHA
SON OF LATE PRAFULLA KUMAR DEKA
AGED ABOUT 50 YEARS
PERMANENT RESIDENT OF VILL- AHATGURI
PO.S. MORIGAON
NAGAON
ASSAM

VERSUS

RAJA KHAN AND 6 ORS
S/O RUPA KHAN
VILL- BESIMARI
P.S. KALGASIA
DIST. BARPETA, ASSAM

2:RASIDUL HOQUE
S/O ABUL KALAM AZAD
VILL- ADITPUR
P.S.KALGASIA
BARPETA
ASSAM

3:MAJIDUL ISLAM
S/O MAFIDUL ISLAM
VILL-JAMIKUR
P.S. KALGASIA
DIST. BARPETA

ASSAM

4:ASHRAFUL ALOM MANDAL
S/O REJAUL HOQUE MANDAL
VILL- BANSBARI NO. 1

P.S.MANIKPUR
BONGAIGAON
ASSAM

5:AJIBUL HUSSAIN
S/O JAKIR HUSSAIN
VILL- CHOR KHLISANMARI
P.S. GOLAKGANJ
DHUBRI.

6:ABUR KALAM
S/O NAGAR ALI
VILL- DALANER ALGA PT. I

P.S. GAURIPUR
DHUBRI.

7:ABUL KALAM AZAD
S/O ASAD ALI SEIKH
VILL-DALANER ALGA PT. I
P.S. GAURIUR
DHUBRI
ASSA

Advocate for the Petitioner : MR. R R KAUSHIK

Advocate for the Respondent :

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 22.05.2023

Heard Mr. P. Barthakur learned Additional Public Prosecutor
appearing for the State/petitioners.

2. The petitioners filed an application under Section 482/401 Cr.P.C. against the impugned order dated 03.04.2023 passed by the Addl. CJM, Barpeta in connection with Barpeta P.S. Case No. 163/2023 denying the further police custody of the respondents and order dated 10.04.2023 passed by learned Sessions Judge, Barpeta, by upholding the order of the Addl.CJM dated 03.04.2023.

3. One S.I. of police lodged an FIR at Barpeta Police Station stating *inter alia* on receipt of information from I/C Crime Branch, Madhya Pradesh, Bhopal regarding a fraudulent activity reported in Bhopal wherein a senior citizen of Bhopal was cheated and an amount of Rs.32,000/- was withdrawn from his account and deposited in an account which has its origin in Barpeta district of Assam. In this connection, one Rejaul Haque, was apprehended by the Crime Branch, Bhopal. The bank statement of Rejaul Haque was obtained and it was found that Rs.32,000/- was credited to his account from the account of the victim.

4. It further came to light that an organized racket of fraudsters are operating in Barpeta district particularly under Barpeta and Kagachia police station area and they have developed a network of buying ATM/SIM cards from gullible people by making telephonic calls and using various modus operandi and fraudulently transfers amount from their bank account to these bank accounts.

5. It is also stated that based on such information, the respondent Nos. 1 to 4 were arrested by the investigating authority on 31.03.2023 and forwarded before the learned CJM, Barpeta and two days police custody was allowed. During investigation, these four accused

persons stated that they were involved in this organized racket of cyber crime. On further interrogation, the accused/respondent Nos. 1 to 4, the names of other accused person Nos. 5 to 7 came to light and they were apprehended from various places in the district of Dhubri and forwarded before the learned trial court along with other accused who were arrested earlier on 02.04.2023. On the expiry of two days of police remand, the application for extension of police remand for the accused Nos. 1 to 4 were sought for along with accused Nos. 5 to 7 but it was rejected on the ground that there was no updation on the case diary since 01.04.2023 and thereby remand the accused/respondents to jail hazot. Against the order of rejection of police custody, a revision petition was preferred by the accused/respondents before the Sessions Judge, Barpeta, which was also rejected.

6. The learned Addl.P.P. has submitted that during investigation, the investigating officer has prayed for ten days police remand but the learned Addl. CJM, Barpeta allowed only two days police custody which is not enough for interrogation by the investigating officer in such a organized cyber crime.

7. The learned Addl.P.P. also stated that the accused/respondent Nos. 1 to 4 were arrested earlier and two days police custody was allowed for interrogating the respondent Nos. 1 to 4. During interrogation, the names of other three accused/respondents came to light and investigating officer also prayed for extension of police remand of earlier arrested accused as well as subsequent arrested accused/respondents for interrogation but the prayer of the petitioners

was rejected. It is also submitted that from the statement of respondent Nos. 1 to 4 it also reveals that the accused persons had obtained ATM/SIM card from various sources as such, the interrogation of the accused persons together is very much essential to find out the involvement of other conspirators in the offence.

8. It is also contended by the learned Addl.P.P. that the present crime is an infested organized crime and many fraudsters belonging to different States like Madhya Pradesh, Bihar, Jharkhand, West Bengal etc. were involved in the organized crime. Hence, it is required to identify and apprehend those fraudsters who are involved in misappropriating the money of general public through this type of cyber crime. Hence, the orders dated 03.04.2023 and 10.04.2023 are liable to be set aside.

9. In support of his submissions learned Addl.P.P. has also placed reliance on the following case laws –

(i) 2023 LiveLaw SC 283 Central Bureau of Investigation v. Vikas Mishra @ Vikash Mishra.

(ii) (1992) vol.3 SCC 141 New Delhi v. Anupam J. Kulkarni.

(iii) (2000) vol.9 SCC 266 Budh Singh v. State of Punjab.

10. I have considered the submission made by the learned Additional Public Prosecutor. It appears from the order of Addl. CJM, Barpeta that only two days police custody was allowed to interrogate the respondent Nos. 1 to 4. Subsequently, accused Nos. 5 to 7 were arrested. Though there was prayer of police custody pertaining to accused Nos. 5

to 7 and extension of police remand on earlier arrested accused/respondents but both the prayers were rejected. The ground shown by the learned Addl. CJM, Barpeta is that there was no progress of investigation reflected in the case diary since the arrest of the accused/respondent Nos. 1 to 4.

11. Case diary has not been produced by the learned Addl.P.P. before this Court. On being enquired regarding further investigation of the case, the learned Addl.P.P. submits that the matter be sent back to the jurisdictional court for further hearing on the proceeding.

12. In view of above, the revision petition is disposed with a direction to the petitioners to approach before the jurisdictional court on furnishing up-to-date case diary. The concerned Magistrate will consider the matter as per provision of law.

JUDGE

Comparing Assistant