

GAHC010180572023



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

Case No. : Bail Appln./2885/2023

HANIFUR RAHMAN AND ANR
S/O LATE AJIJUR RAHMAN
R/O SONAPUR, KACHOTOLI GAON, P.S. SONAPUR, DIST. KAMRU (METRO),
ASSAM

2: SAIDUL ISLAM @ SHAHIDUL ISLAM
S/O SUKUR ALI
R/O BAGAMARI
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 MRIDUL KUMAR KALITA

ORDER

06.10.2023

1. Heard Mr. N.J. Dutta, Learned Counsel for the Petitioners. Also heard

Mr. K.K. Das, Learned Additional Public Prosecutor.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, has been filed by the petitioners, namely, 1. Hanifur Rahman and 2. Saidul Islam @ Shahidul Islam, who were arrested on 09.08.2023 in connection with Jagiroad P. S. Case No. 238/2023 under Sections 279/333/307/427/420/468/471/34 of the Indian Penal Code.

3. The accusation in this case is that on 10.8.2023, one Biman Konwar, ASI of Police of Nellie Outpost, lodged an FIR before the Officer-In-Charge of Jagiroad Police Station, *inter-alia*, alleging that on 09.08.2023, a secret information was received at Nellie Police Outpost that a group of three persons involved in ATM fraud and cheating were coming from Nagaon side to Guwahati in a blue-coloured swift vehicle bearing registration number AS 01 EG 6815.

4. On receipt of said information in Naka Checking was arranged at about 7.30 pm. During Naka Checking, when the reported vehicle was found coming, it was signalled to stop, however, instead of stopping at the barricade, the driver of the said car increased the speed of the car and attempted to hit the on-duty police officers and after dashing against the barricade and fled away. The car was chased by the police vehicle and when it reached near Kumarbori Bridge, an accident occurred where the police car hit the car driven by the accused persons, thereby injuring the accused persons who were sitting in the car. Police personnel also got injured in the said accident.

5. It is also stated in the FIR that during search operation, 37 numbers of ATM cards and one swipe machine and four numbers of mobile phones along with other articles including cash amount was recovered from the possession of the accused persons including the present petitioners.

6. Learned Counsel for the petitioner has submitted that the present

petitioners were brutally assaulted by the police after their apprehension which caused severe injuries on their person and thereafter the petitioner No. 1 namely Hanifur Rahman was granted interim anticipatory bail by this Court by order dated 17.08.2023 and accordingly, he took treatment in the hospital and he is yet to recover completely.

7. Learned Counsel for the petitioner has also submitted that the allegations levelled against the present petitioners in this case is false and they are not involved in any offence as alleged in the FIR.

8. On the other hand, Mr. K.K. Das, learned Additional Public Prosecutor has submitted that there are sufficient incriminating materials against the present petitioners in the case diary and they are involved in a racket of ATM fraud by cheating innocent citizens and duping them of their hard-earned money. It is also submitted by the learned Additional Public Prosecutor that the investigation is at initial stage and considering the conduct of the present petitioners, there is every likelihood that they would evade the process of law and they would hamper the fair investigation, if they are released on bail. Learned Additional Public Prosecutor has vehemently opposed the grant of bail to the present petitioners.

9. I have considered the rival submissions made by Learned Counsel for both the parties and have perused the materials on record including the case diary of Jagiroad P. S. Case No. 238/2023.

10. It appears from the case diary that though the present petitioners were also injured, however, the version of the police is that they got injury in the accident when they were chased by police. It also appears from the materials available in the case diary that the present petitioners did not stopped at Naka Checking conducted by police and fled away there from by dashing against the

barricades put in the Naka Checking and they were only apprehended when they were chased by police.

11. It also appears from the materials in the case diary that 37 numbers of ATM cards belonging to 37 different cardholders were seized from the present petitioners and none of these 37 ATM cards belong to any of the present petitioners.

12. It also appears that the investigation with regard to the allegations of ATM fraud by the present petitioners is still at a crucial stage and considering the materials available in the case diary, this Court is of the considered opinion that this is not a fit case to allow the present petitioners to go on bail at this stage of the investigation.

13. For the aforementioned reasons, the interim anticipatory bail granted to the petitioner no. 1 Hanifur Rahman by order dated 17.08.2023 is hereby cancelled and the prayer for bail of other petitioner, namely, Saidul Islam @ Shahidul Islam is also rejected. The petitioner no. 1 namely, Hanifur Rahman is hereby directed to surrender before the Court of learned Chief Judicial Magistrate, Morigaon on or before 18.10.2023.

14. However, considering the health condition of both the present petitioners, the Superintendent of District Jail, Morigaon is hereby directed to provide all necessary medical treatment to both the petitioners as per requirement.

15. With above observation, the prayer for bail of the present petitioners is hereby rejected and this bail application is accordingly disposed of.

JUDGE

Comparing Assistant