

GAHC010180572023



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

Case No. :

Bail Appln./3264/2023

SHAHIDUL ISLAM @ SAIDUL ISLAM AND 3 ORS
S/O LT. SUKUR ALI
VILL- BOGAMARI
P.S. AND DIST. BARPETA
ASSAM

2: DEWAN SAMSUDDIN
S/O ABDUL SOBOR
R/O VILL- SONAPUR PATHAR
P.S. SONAPUR
DIST. KAMRUP (METRO)
ASSAM

3: MD. RAMESH ALI
SON OF MD. KITAP ALI
OF VILL- KAYAKUCHI

P.S. AND DIST. BARPETA
ASSAM

4: ARIFUL ISLAM
SON OF MD. JALAL UDDIN
OF VILL- BHOKUAMARI

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 MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

06.10.2023

Heard Mr. N.J. Dutta, learned counsel for the petitioners. Also heard Mr. D. Das, learned Additional Public Prosecutor, Assam.

This application under section 439 of the Code of Criminal Procedure, 1973 has been preferred by the petitioners, namely, (1) Shahidul Islam@Saidul Islam, (2) Dewan Samsuddin, (3) Md. Ramesh Ali and (4) Ariful Islam.

The petitioner No. 1 and 2, namely, (1) Shahidul Islam@Saidul Islam, (2) Dewan Samsuddin, were arrested on 09.08.2023 and were shown arrest in the Jagiroad P.S. Case No. 74/2023 on 11.09.2023, whereas, petitioner Nos. 3 and 4, were arrested on 01.09.2023 and they were also shown arrest in the Jagiroad P.S. on 11.09.2023.

The accusation in this case is that on 03.03.2023, one Dhenuram Bordoloi, lodged an FIR before the Officer-In-Charge of Jagiroad Police Station, *inter-alia*, alleging that on 2nd March, 2023 at about 10:30 A.M. when he went to withdraw Rs. 100/- from Jagiroad Sonaikuchi from the ATM's situated at Jagiroad Sonaikuchi, SBI branch and unknown persons fraudulently exchanged his ATM card with another card and later on, he came to know that Rs.58,000/-

(Rupees Fifty-eight Thousand) were withdrawn by using his ATM Cards. On receipt of the said FIR Jagiroad P.S. Case No. 74/2023 has been registered.

Mr. N.J. Dutta, learned counsel for the petitioners has submitted that with regard to the petitioner No. 1, namely, Shahidul Islam@Saidul Islam, he could not have committed the offence which is alleged in the FIR on 3rd March, 2023 as on the said date, he was in custody since 16.10.2020. To substantiate his submission, learned counsel for the petitioners has produced an order of a co-ordinate bench of this Court in Bail Application No. 773/2023, wherein, by order dated 09.03.2023, it was observed that the petitioner No. 1, Shahidul Islam@Saidul Islam was in custody since 16.10.2020 and the date on which the said order was passed, ie. 09.03.2023, he was still in custody. Therefore, it appears that Shahidul Islam@Saidul Islam could not have committed the offence alleged in the FIR on 3rd March, 2023. As regards, other petitioners also, learned counsel for the petitioners has submitted that they are not involved in the offence alleged in the FIR and they have been falsely implicated in this case.

On the other hand, Mr. D. Das, learned Additional Public Prosecutor has produced the case diary of Jagiroad P.S. Case No. 74/2023 and has submitted that he has instructions from the Investigating Officer to the effect that the petitioner No.1 Shahidul Islam@Saidul Islam was arrested on the basis of photo identification by one of the witness whose statement was recorded by the Investigating Officer under Section 161 of the Code of Criminal Procedure, 1973.

However, he has also fairly submitted that record shows that the petitioner No.1 Shahidul Islam@Saidul Islam could not have committed the offence alleged as he appears to be in custody on the day of alleged offence. As regards other petitioners, namely (2) Dewan Samsuddin, (3) Md. Ramesh Ali and (4)

Ariful Islam is concerned, learned Additional Public Prosecutor submitted that their statements are recorded under Section 161 of the Code of Criminal Procedure, 1973 by the Investigating Officer and though there is evidence of they are being involved habitually in similar nature of offences. However, as regards the offence alleged on 2nd March, 2023 there is no material against the present petitioners.

Considering the submissions made by learned counsel for both the sides and considering the materials available on record, further custodial detention of the above named petitioners does not appear to be necessary for fair completion of the investigation of the Jagiroad P.S. Case No. 74/2023.

In view of above, the above named petitioners, are hereby allowed to go on bail of Rs. 30,000/- each with a suitable surety of like amount to the satisfaction of the learned Chief Judicial Magistrate, Morigaon subject to condition that they shall co-operate with the Investigating Officer and they shall provide their contact details to the Investigating Officer.

With the above observation, this bail application is hereby disposed of.

Send back the case diary.

JUDGE

Comparing Assistant