

GAHC010180572023



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

Case No. :

Bail Appln./3405/2023

MD. ARIFUL ISLAM AND ANR
S/O MD. JALALUDDIN
R/O BHOKUAMARI
P.S. AND DIST. BARPETA
ASSAM

2: MD. RAMEZ ALI
S/O KITAP ALI
R/O VILL- KAYAKUCHI
P.S. AND DIST. BARPETA
ASSAM
VERSUS

THE STATE OF ASSAM
REP. BY THE PP
ASSAM

Advocate for : MR. N J DUTTA
Advocate for : PP
ASSAM appearing for THE STATE OF 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. Ariful Islam and 2. Rameez Ali, who were arrested on 01.09.2023 and were shown arrested on 11/09/2023, 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.

6. Learned Counsel for the petitioner has submitted that the present petitioners are not named in the FIR and they are arrested merely on the basis of suspicion. It is also submitted that the petitioners are detained behind the bar since 1st of September, 2023 merely on the basis of suspicion and considering the length of detention the prayer for their bail is made.

7. On the other hand, Mr. K.K. Das, learned Additional Public Prosecutor has submitted that there are sufficient incriminating materials against the present petitioners regarding their involvement 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 there is every likelihood that on their release on bail they would evade the process of law and they would hamper the fair investigation. Learned Additional Public Prosecutor has vehemently opposed the grant of bail to the present petitioners.

8. 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.

9. It appears from the case diary that above named petitioners are not named in the FIR and they were not involved in the incident which occurred on 09.08.2023. Apart from the statement of the co-accused, at this

stage, there is no incriminating materials against the above-petitioners in the case diary implicating them in the offence alleged in the FIR dated 10/08/2023.

10. The above named petitioners are detained behind the bars since 01/09/2023 and in view of reasons mentioned in paragraph No. 9 here in above, this court is of the considered opinion that further custodial detention of the above named petitioners may not be necessary for fair completion of the investigation of Jagiroad PS Case No. 238/23, if they cooperate in investigation.

11. For the reasons mentioned above, both the above named petitioners are here by allowed to go on bail of Rs.30,000/- each with one surety of like amount subject to the satisfaction of learned Chief Judicial Magistrate, Morigaon with following conditions-

A. The petitioners shall not directly or indirectly make any inducement threat or promise to any person or persons who may be acquainted with the facts of the case so as to dissuade such person from disclosing such facts to the investigating officer.

B. The petitioners shall appear before the investigating officer as and when so required by him for the sake of fair investigation during the pendency of the investigation of Jagiroad PS Case No. 238/23.

C. The petitioner shall provide their contact details to the investigating officer and shall cooperate in the investigation.

12. This Bail Application is accordingly disposed of.

JUDGE

Comparing Assistant