

GAHC010259142023



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

Case No. : Bail Appln./4212/2023

MOMIRUL HOSSAN BHUYAN
SON OF BAREK ALI BHUYAN, VILLAGE- AMBARI BHUYANPARA, P.O.
BORKALIA SHERSHO, P.S. FAKIRGANJ, DIST.- DHUBRI, ASSAM, PIN-
783330

VERSUS

THE STATE OF ASSAM
TO BE REPRESENTED BY P.P., ASSAM

Advocate for the Petitioner : MR. A F N U MOLLAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

30.11.2023

Heard Mr. A.F.N.U. Mollah, learned counsel for the petitioner. Also heard Ms. S. Jahan, learned Additional Public Prosecutor, appearing for the State of Assam.

This application under Section 439 of the Code of Criminal Procedure,

1973 has been filed by the petitioner, namely, Momirul Hossan Bhuyan, who has been detained behind the bars since 06.11.2023 (for last 24 days) in connection with Bharalumukh P.S. Case No. 225/2023 under Section 461/380 read with Section 413 of the Indian Penal Code.

The accusation in this case is that on 25.07.2023, one Sri Vikash Nahar, who is the proprietor of M/s Trishla Enterprises situated at A.T. Road, Bharalumukh, had lodged an FIR before the Officer-In-Charge of Bharalumukh Police Station, *inter-alia*, alleging that on 25.07.2023, some unknown persons had stolen 78 pieces of smart phones from his shop. It is also alleged that an amount of Rs. 2,300/- was also stolen therefrom.

Learned counsel for the petitioner has submitted that the petitioner is innocent and he is not involved in the offence which has been alleged in the FIR.

On the other hand, learned Additional Public Prosecutor has produced the case diary of Bharalumukh P.S. Case No. 225/2023 and has submitted that the Investigating Officer has recorded the statement of the present petitioner and some of the witnesses under Section 161 of the Code of Criminal Procedure, 1973.

It is also submitted by learned Additional Public Prosecutor that though there is material on record to suggest that the petitioner had purchased 10 numbers of mobile phones along with two others from one Ajibur, who is the co-accused in this case. However, it is not clear from the statement of the said Ajibur that the present petitioner knew that those mobile phones which he had purchased were stolen mobile phones.

On the other hand, learned Additional Public Prosecutor has also submitted that otherwise also the petitioner's statement has been recorded and

he has been detained behind the bars for last 24 days.

Considering the submissions made by learned counsel for both the parties and after perusal of the materials on record including the case diary of Bharalumukh P.S. Case No. 225/2023, this Court is of the considered opinion that as the investigation has fairly progressed and as the statement of the present petitioner has already been recorded and at present there is nothing to suggest that the petitioner knowingly purchased the 10 mobile phones knowing them to be stolen, further custodial detention of the present petitioner does not appear to be necessary, if he otherwise co-operates in the trial.

In view of the above, the above-named petitioner is hereby allowed to go on bail of Rs. 30,000/- with a suitable surety of like amount to the satisfaction of the learned Chief Judicial Magistrate, Kamrup (M) with conditions that:-

(i) the petitioner shall appear before the Investigating Officer of Bharalumukh P.S. Case No. 225/2023, as and when required by the Investigating Officer for the purpose of fair completion of the investigation of the case; and

(ii) the petitioner shall not directly or indirectly make any inducement threat or promise to the informant or to any other persons who may be acquainted with the facts of the case so as to dissuade such person from disclosing such facts before the Investigating Officer or to any Court.

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

Send back the case diary.

JUDGE

Comparing Assistant