

GAHC010265212023



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

Case No. : Bail Appln./4300/2023

PRASHANT SHARMA @ GOLU AND 3 ORS
S/O LT. SRI ROHTASH SHARMA R/O HOUSE NO. D14, KHANPUR, P.S.
SAKET, NEW DELHI-110062

2: JITU SOOD @ JITENDER
S/O SRIMAN JAGADISH SOOD @ JAGDISH R/O HOUSE NO. B 1040
BADARUR SOUTH DELHI 110044

3: YASH KAMBLE @ YASH PRADEEP KAMBLE
S/O PRADEEP KAMBLE @ PRADEEP RAGHUNATH KAMBLE R/O BMC
CHAWAL NO. 12 ROOM NO. 131 A DOCTOR ANNIE BASANT ROAD P.S
WORLI MAHARASHTRA 400018

4: SWABHIMAN BHOLA @ SAM
S/O LT RAJENDAR KR. BHOLA @ RAJENDER KUMAR R/O J220/54 A
BISHNU GARDEN P.S TILAK NAGAR NEW DELHI 11001

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A CHAUDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

24.11.2023

1. Heard Mr. B. K. Mahajan, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State of Assam.
2. This is an application made under Section 439 Cr. P.C. seeking bail by the accused/petitioners, namely, **(1) Prashant Sharma @ Golu, (2) Jitu Sood @ Jitender, (3) Yash Kamble @ Yash Pradeep Kamble and Swabhimani Bhola @ Sam**, who have been shown arrested on 10.11.2023 in connection with Dispur PS Case No. 2126/2023 during their judicial custody for their arrest in connection with Cyber PS FIR No. 08/2023 being registered under Sections 120(B)/419/420/385/467/471/468/507 of the Indian Penal Code read with Sections 65/66/66B/66C/66D of the Information Technology Act, 2000.
3. It is worth mentioning that the petitioners have already been granted bail by this Court under its order dated 08.11.2023 passed in Bail Appln No. 3689/2023 and Bail Appln No. 3690/2023 respectively.
4. On 14.09.2023, an F.I.R. was lodged before the Cyber P.S. Panbazar, Guwahati corresponding to GD Entry No. 200 dated 13.09.2023. The relevant portion of the FIR is quoted herein below:-

“ I have the honour to inform you that with reference to the above GDE, a reliable source information was received that some Scammer gangs are

operational in Guwahati, Assam was are involved in operating call centers across India and are scamming and cheating gullible Indian and Foreign Nationals by impersonating as Tech Support Staff by originating "tech support pop-ups and by impersonating as legitimate customer service representatives to deceive individuals and cheat them out of money or personal information making various false claims to create a sense of urgency or fear by claiming that the bank account has been compromised, computer has a virus, personal identifiable information are at risk, computer or social media account has been hacked. Further, this gang of Scammers initiate contact through unsolicited phone calls, claiming to be from a well known company or organization, such as a bank, tech support, government agency, or even a popular online service for their financial gain. They ask the victims to install remote desktop software and thereby take access to their computers and thereafter steal personal information and plant malware on the targets victims devices. More importantly, the gang of scammers has associates and members across India and the scammers launders the money obtained through these scams.

Accordingly, upon-receipt of the source information, I along with combined staff have made an enquiry about the matter in the Guwahati City. During enquiry, it revealed that the following persons along with other accomplices have illegally setup Customer Care Centres/Call Centers as per information received at Bamunimaidam (back side of Sicedm) Mono Motors building at Bamunimaidam, at VIP Road opposite Trust Motors, Outspire Solutions at Zoo Road, above AG Medicare at Rajgarh Road, near Hotel D Agni Dip at ABC and few other places of Guwahati which are used to scam and cheat Indian and Foreign Nationals by impersonating as Tech Support Staff. During enquiry, intel received has been found to be true to its nature. The below mentioned accused along with others are found to be the masterminds involved in the offense. Furthermore, the accused persons and their associates manipulates and forge electronic documents and use them as genuine documents for the purpose of cheating and found to be actively operating this scam since quite long".

5. The petitioners were arrested in connection with the aforesaid case and they were forwarded to the learned Court of Chief Judicial Magistrate, Kamrup (M), Guwahati seeking 7 (seven) days judicial custody. The ground of arrest reflected in the forwarding report is quoted herein below:-

“That all the accused persons noted below are involved in running call centres illegally in online system with planned conspiracy to commit cheating and forgery etc. upon the some of the gullible Indian as well as some foreign nationals with impersonation as Tech Support Staff and also by originating tech support pop ups as well as by impersonating to be legitimate customer service representatives to deceive individuals as a whole and thereby, they have cheated some Indian as well as foreign nationals in connection with the instant case which is very serious are important in nature.

That, desktop computers, laptops and mobile phones etc. being the objectionable articles/instruments used by the accused persons for commission of the crime as alleged have been seized as exhibit as per seizure list at the call centres located at Bamunimaidam (back side of Sicedm), Mono Motors Building, Bamunimoidam, VIP Road opposite Trust Motors, Outspire Solutions at Zoo Road, Above AG Medicare Rajgarh Road, and ABC near Hotel D Agni Dip, Guwahati respectively in connection with the instant case”.

6. Subsequently, the petitioners were granted bail by this Court in the following bail applications:-.

Petitioner Nos.	Bail Appln No.	Order dated
Petitioner No. 1.	BA 3689/2023	08.11.2023
Petitioner Nos. 2, 3 and 4	BA 3690/2023	08.11.2023

7. Such bail applications were allowed considering the materials found in the case diary as well as considering the length of the accused petitioners in custody inasmuch as the petitioners were under custody for 53 days on 08.11.2023 . In terms of the allegations made and offences registered, the Investigating Authority is required to complete the investigation within 60 days, however, no charge sheet was filed.
8. Subsequently, another FIR was lodged by the Inspector of Police, Crime Branch, Guwahati on 07.09.202e inter alia making the following allegations:-

“I, hereby submit this First Information Report (FIR) to inform you of a serious event involving the illegal operation of fraudulent call centres in Guwahati, Assam. With reference to General Diary Entry No. 17 dated 06.11.2023, a centres engaged in tech support scams targeting gullible Indian and Foreign Nationals. The perpetrators impersonate as tech support staff, initiate unsolicited phone calls, and employ deceptive tactics to defraud individuals of money and personal information.

The reliable source of information has revealed that these fraudulent call centres operate by generating fake tech support pop-ups and posing as legitimate customer service representatives. They create a false sense of urgency or fear by claiming bank accounts have been compromised, computers are infected with viruses, personal identifiable information (PII) is at risk, or social media accounts have been hacked. The scammers gain access to victims computers through remote desktop software, stealing personal information and planting malware on their devices”.

9. Accordingly, they were shown to have been arrested as discussed

hereinabove. In the aforesaid backdrop, the present application is filed.

10. This matter was listed yesterday i.e. on 23.11.2023 and on the prayer of the learned Additional Public Prosecutor for the State of Assam, the matter was adjourned and was directed to be listed today. Accordingly, same is listed, however, no case diary is produced.
11. Mr. Borthakur, learned Additional Public Prosecutor for the State of Assam while justifying such arrest strenuously argues that the petitioners are the members of an international gang and their custodial interrogation are very much necessary and therefore, at the initial stage of investigation, they should not be released on bail.
12. Heard the learned counsel for the parties. Also perused the materials available on record.
13. As quoted hereinabove, from the two FIRs, and the forwarding report, it is absolutely clear that the allegation made are absolutely similar. Commission of separate offence is not made in the 2nd FIR except repeating the allegation that fraudulent call centres have been operated to generate fake 'tech support' pop-ups and posing as legitimate customer servicer for trapping the vulnerable customers and bank accounts of such customers are compromised.
14. At the cost of repetition, this Court records that in the 2nd FIR no new facts or allegation or commission of any separate offence is disclosed inasmuch as on the basis of the FIR registered at the 1st point of time, the petitioners have not only been interrogated in the police custody but they

have also been in custody including judicial custody for more than 65 days. The petitioners were granted bail by this Court in connection with the 1st FIR on 08.11.2023. The 2nd FIR was lodged on 07.11.2023. The prayer to show the petitioners to be arrested in connection with 2nd F.I.R. was made by the I.O., before the learned Chief Judicial Magistrate, Kamrup (M) at Guwahati on 09.11.2023.

15. It is seen that the two FIRs have been lodged and registered in the backdrop of same set of facts and allegations. That being the position, this Court is of the view that the investigating authority has got sufficient time, statutorily provided to complete the investigation in the 1st case, however, may be for sufficient reasons, they have not been able to complete the investigation. Therefore, in the considered opinion of this Court, custody of the petitioner in connection with the present case on the same set of facts and allegations, may not be warranted.
16. That being the position, this Court is of the view the petitioners are entitled to be released on bail in this case also.
17. In view of the peculiar facts and circumstances of the case, the petitioners namely **(1) Prashant Sharma @ Golu, (2) Jitu Sood @ Jitender, (3) Yash Kamble @ Yash Pradeep Kamble and (4) Swabhimman Bhola @ Sam**, be released on bail on executing a bail bond of Rs. 2,00,000/- (Two lakhs) with two suitable solvent sureties of like amount each to the satisfaction of the learned Chief Judicial Magistrate, Kamrup (M), Guwahati in connection with aforementioned case. The bail granted to the petitioners shall be subject to following conditions:-

- (a) The petitioners shall not leave the territorial jurisdiction of learned Chief Judicial Magistrate, Kamrup (M), Guwahati, without prior written permission from him;
- (b) The petitioners shall not hamper and tamper with the evidence of the case;
- (c) The petitioners shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police office.
- (d) The petitioner shall surrender their passports, if any (if not already surrendered) before the learned Chief Judicial Magistrate, Kamrup (M), Guwahati, Assam.
- (e) The petitioners shall not try to contact any of the witnesses by any mode including telephone, social media etc.
- (f) The petitioners shall furnish the present residential address with proof to the Investigating Officer as well as to the learned Jurisdictional Magistrate and shall not change the said residence without prior permission of the learned Magistrate.
- (g) The petitioners shall appear before the I.O., on the 1st day of every week, till such appearance is dispensed with by the I.O.

In the aforesaid term, this bail petition is allowed.

JUDGE

Comparing Assistant