

GAHC010292382023



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

Case No. : Bail Appln./4659/2023

NIRANJAN DEKA AND ANR.
S/O LT. MANORAM DEKA @ NANDARAM DEKA R/O BUDURUKUCHI
NALBARI P.S NALBARI DIST. NALBARI ASSAM

2: NAYAN KALITA
S/O LT. BHABEN KALITA R/O VIL HUDUMPUR LAHESWARI P.S
PALASHBARI DIST. KAMRUP M ASSA

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 KAUSHIK GOSWAMI

O R D E R

22.12.2023

1. Heard Mr. B.K. Mahajan, learned counsel appearing on behalf of the petitioners as well as Mr. R.J. Baruah, learned Addl. P.P. for the State respondent.

2. This is an application filed under Section 439 Cr.P.C. praying for granting regular bail to the petitioners, namely, **Niranjan Deka and Nayan Kalita** in connection with **Cyber Police Station Case No. 12/2023**, registered under Sections **120(B)/419/420 of the Indian Penal Code, 1860 R/W Section 66C/66D of the IT Act, 2000 and added Sections 409/468/471 IPC.**

3. The case of the prosecution is that on 02.11.2023, Mr. Papu Gogoi, Circle Officer, Dispur Revenue Circle, informant, lodged an FIR before the Cyber Police Station, Panbazar, Guwahati, alleging inter-alia that:-

"As directed by Deputy Commissioner vide CK (M)/CB/3/2018/565-A dtd. 01/11/23, 1, Shri Papu Gogoi, ACS, Circle Officer, Dispur Revenue Circle, is hereby lodging an FIR for detection of unauthorised access of CO login (gogoi1234) of Dispur Revenue Circle. That a

detail report in the matter was submitted to District Commissioner, Kamrup (M) on 01/11/2023.

That it came to the notice of the undersigned regarding a mutation order passed online in Dharitree portal on 05/10/2023 in case no MET/DIS/2022- 23/96042/OMUT against a deed bearing serial 6268 dtd 31/12/1995; wherein no offline case record of any notice issued, order etc. was found to be available in the office of the undersigned. Upon enquiry, LM reported that neither field verification nor any report was submitted in respect of the referred mutation case.

Having found out the matter, the undersigned officially communicated to DIO, NIC, Kamrup (M) to kamrupmetro@nic.in on 28/10/2023 requesting for login history details from 01/10/2023 to 26/10/2023, the undersigned examined the records of the login history and following observations were made:

- 1. That an IP address 10.177.88.65 had record of login/logout history of 52 times from 04/10/2023 to 26/10/2023.*
- 2. That an IP address 10.177.88.58 had record of login/logout history of 2 times on 10/10/2023*

That the list of official 33 Operational IP Addresses in the office of the Circle Officer, Dispur Revenue Circle is submitted herewith for reference. The above stated IP addresses are not from the official list of 33 IP addresses allotted to the office of the Dispur Revenue Circle. Hence, the access made by the above referred IP addresses are unauthorized and illegal, which therefore require detail investigation and expert examination of the matter during my tenure as Circle Officer, Dispur Revenue Circle from 16/06/2023 to till date."

4. Mr. B.K. Mahajan, learned counsel for the petitioners submits that the petitioners are not named in the FIR and the petitioners are working as Office Peon in the office of the Sub-Register, Ganeshguri, Guwahati and in the said capacity, he has been discharging his duty with utmost sincerity and dedication

without any complaint whatsoever from any corner and he is having no any criminal antecedent. He further submits that he has been arrested merely on suspicion only on the basis of the statement of the co-accused. He further submits that he is no way involved with the alleged offence and is only responsible for uploading those documents, which were verified and duly signed by the concerned Lat Mandal, SK as well as Circle Officer of Dispur Revenue Circle and he has no role in mutation, partition and record correction and the same are done by the other Data Entry Operators. He further submits that by referring to Section 81 of the IT Act for the provisions of the IT Act shall have overriding effect.

5. By referring on the decision of the Hon'ble Supreme Court in the case of ***Sharat Babu Digumarti Vs. Government (NCT of Delhi) reported in (2017) Vol-II page 18***, he submits that once the provisions of a Special Act has been registered along with the Provision of General Act, the Provisions of the Special Act shall have a overriding effect and the accused/petitioner shall get out of the General Act. He further submits that there is no material available on record indicating that the present petitioner is required in any other cases.

5. On the other hand, Mr. R.J. Baruah, learned Addl. P.P. strongly opposes the prayer of the bail. He submits that the investigation is going on and is at the initial stage and therefore, if the accused/petitioner is released on bail, the same

shall hamper the ongoing investigation.

6. He further drawn the attention of this Court to ground of arrest at Page 18, which is to the effect that during investigation, it was found that the alleged accused persons have involved in making fraud false deed by two ways one by commissioning and another one by back date entry and volume book and arrested accused persons and his team targeted vacant land in collaboration with land mafias and by making fake deeds during the year 1998 and near those times thereby cheating many innocent victims and taking huge amount of money.

7. I have heard the submissions made at the Bar and also perused the case records. Investigation has progressed. The petitioner has pledged to co-operate with the remaining part of the investigation. It has also come to the notice of this Court that this Court vide order dated 14.12.2023, after perusing the case diary and considering the stage of investigation has granted bail to one of the co-accused, who is also a contractual worker similar to that of the petitioner. This Court has also in that case observed that the investigation has also progressed to a considerable extent.

8. Considering all aspects of the matter, the petitioners, namely, **Niranjan Deka and Nayan Kalita** shall be enlarged on bail of Rs. 30,000/- each with the suitable surety each of the like amount to the satisfaction of learned CJM,

Kamrup (M), Guwahati,

9. The bail granted to the petitioner shall be subject to the following conditions-

i) The petitioners shall appear before the Investigating Officer once in a month until the entire investigation of the case is completed and as and when called by the Investigating Police Officer for the purpose of investigation of the case;

ii) The petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of this case so as to dissuade such person from disclosing such facts to the Court or to any Police Officer;

iii) The petitioners shall not leave the territorial jurisdiction of the trial Court without prior permission till completion of the trial; and

iv) The petitioners shall refrain from such activities with which they are alleged, failing which, bail order of the petitioners shall stand cancelled.

10. With the above observation, this bail application stands allowed.

11. This disposes of the bail application.

12. It is needless to say that the observations made in course of this bail order shall not have any bearing on the independent judicial discretion of the learned trial Court.

JUDGE

Comparing Assistant