

GAHC010052992024



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

Case No. : Bail Appln./742/2024

AMDADUL HUSSAIN
S/O LATE NUR SALAM
R/O WARD NO. 4,
MOIRABARI
P.S. MOIRABARI
DIST MORIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR S M ABDULLAH P

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 19-03-2024

Heard Mr. S.M. Abdullah P, learned counsel for the accused/petitioner and Mr. B.B. Gogoi, learned Additional Public Prosecutor for the State.

2. This is an application made under **Section 439 Cr.P.C.**, seeking bail by

the accused/petitioner, namely, **Amdadul Hussain**, in connection with **Moirabari P.S. Case No. 18/2024**, registered under **Sections 120(B)/419/420/406/467/468/ 471/34, IPC** read with **Sections 66(C)/66(D)** of the **Information Technology (I.T.) Act**.

3. It is submitted by the learned counsel for the accused/petitioner that the accused/petitioner was arrested on 11.02.2024 and since then he has been languishing in jail hazot. The accused/petitioner is in no way connected with the alleged offence as stated in the FIR. The name of the accused/petitioner is also not mentioned in the FIR. The accused/petitioner is totally unaware as to how his mobile number has been hacked and used for committing the said offence. It is also submitted that nothing incriminating material has been recovered and seized from the possession of the accused/petitioner.

4. Learned counsel for the accused/petitioner has further submitted that no notice under Section 41A, CrPC has been served upon the accused/petitioner which has a mandatory requirement as held by the Hon'ble Supreme Court of India in the case of ***Satender Kumar Antil vs. Central Bureau of Investigation***, reported in **(2022) 10 SCC 51**.

5. Learned counsel for the accused/petitioner also has contended that assuming the allegations made against the accused/petitioner are true then, at best, Section 66(C) and 66(D) of the I.T. Act are applicable against the accused/petitioner which is bailable in nature and other sections of IPC are not applicable against him. According to the learned counsel for the accused/petitioner, the accused/petitioner is a local person having root in the society and as such, there is no chance of his absconding if he is allowed to go on bail.

6. In response to the submission of the learned counsel for the accused/petitioner, learned Additional Public Prosecutor has produced the case diary and submits that the name of the accused/petitioner has not been mentioned in the FIR. However, the persons arrested in the case have stated that the accused/petitioner is very much involved in this cyber crime.

7. I have considered the submissions of the learned counsel for the parties and perused the case diary.

8. On perusal of the case diary, it reveals that no notice has been served to the accused/petitioner under Section 41A, CrPC which is mandatory in nature. It is to be noted that no incriminating material has been found or seized from the possession of the present accused/petitioner. There is no specific allegation against the present accused/petitioner involved in connection with this case in committing forgery and cheating.

9. In view of the above and considering the length of detention, the accused/petitioner, Amdadul Hussain, shall be released on bail in connection with **Moirabari P.S. Case No. 18/2024**, registered **under Sections 120(B)/419/420/406/467/468/471/34, IPC** read with **Sections 66(C)/66(D)** of the **Information Technology (I.T.) Act**, on furnishing bail bond of **Rs.30,000/-** with **a suitable surety** of the like amount, to the satisfaction of learned Chief Judicial Magistrate, Morigaon.

10. The direction for bail is further subject to the conditions that the accused/petitioner:

- (a) shall not leave the territorial jurisdiction of learned Chief Judicial Magistrate, Morigaon without prior written permission from him/her;
- (b) shall not hamper with the investigation, or tamper with the evidence of

the case;

(c) 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 him from disclosing such facts to the Court or to any police officer.

(d) shall appear before the Investigating Police Officer once in a week for six weeks after his release on bail or as and when called upon by the Investigating Police Officer till the investigation of the case is completed.

11. In terms of the above, this bail application stands disposed of.
12. Return the case diary.

JUDGE

Comparing Assistant