

GAHC010063152024



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

Case No. : Bail Appln./913/2024

BILLAL HUSSAIN AND ANR.
S/O RAMJAN ALI
R/O VILL- FATEHPUR
P.S. BIHPURIA
DIST.LAKHIMPUR, ASSAM

2: KURAN ALI
S/O LATE ABDUL WAHED
R/O VILL- NO. 2 ISLAMPUR
P.S. BIHPURIA
DIST. LAKHIMPUR
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N HASAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

09.04.2024

Heard Mr. N. Hasan, learned counsel of the petitioners. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor representing the State respondent.

This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by the accused/petitioner, namely, Khairul Islam, who has been languishing in jail since 06.03.2024 in connection with Bihpuria P. S. Case No.40/2024 under Sections 120(B)/ 406/ 420/ 489-B/ 489-C of Indian Penal Code (Corresponding to GR Case No. 153/2024).

The Case Diary has been received and I have perused the same.

It is submitted by the learned counsel for the petitioners, Mr. Hasan that the accused/petitioners are innocent and they are not all involved in the alleged offence as stated in the FIR. However, it is a fact that some fake gold and fake currency note were recovered from the possession of the accused/petitioners along with some mobile handset. But, there is no evidence that those currencies were not used for the purpose of cheating nor it was used as a genuine currency in the market or any other places to attract Section 489-B of IPC. He further submits that the case under Section 489-C may attract which is bailable in nature. Apart from that there is no material collected by the IO to prove as to whether they have cheated any person by giving fake gold or currency to attract section 420 of IPC. Both the accused/petitioners are ready and willing to co-operate the IO in further investigation of the case if they are allowed to go on bail. He further submitted that the accused/petitioners are behind the bar since 06.03.2024 and thus, they are in custody for last 35 days and accordingly, considering the length of detention already undergone by the accused/petitioners, they may be enlarged on bail as the I.O. has got sufficient time for his custodial interrogation.

On the other hand, Mr. Borthakur, learned Public Prosecutor, has submitted that there

are sufficient incriminating materials available in the case diary showing their involvement in such kind of offences. More so, one fake gold item as well as fake currency has been recovered from the accused/petitioners and apart from that, one similar case is also pending against the petitioner No.1 namely Billal Hussain being numbered as Samuguri P. S. Case No.494/2019. He further submitted that the case is still under investigation and hence, only considering the length of detention, the present accused/petitioners should not be allowed to go bail.

After hearing the submissions made by the learned counsels for both sides, I have perused the Case Diary which reveals that the some materials are collected by the IO against the accused/petitioners. However, there is no material available in the Case Diary as to whether the present petitioners have cheated any person or as to whether the fake currency note was used in the market as a genuine currency. However, it cannot be denied that such kind of offences is very much prevalent in the entire Lakhimpur area and these petitioners also hails from Bihphuria and only on the basis of the secret information, the IO made the search operation in the house of the accused/petitioners. But, on perusal of the Case diary, it is seen that the IO did not take any further steps for further interrogation of the accused/petitioners, while they were in judicial custody nor any statement of any other witnesses or victim in connection with this case has been recorded.

Considering the submissions of learned counsels for both sides, as well as considering the length of detention undergone by the accused/petitioners i.e. 35 days, I am of the view that the I.O. has got ample opportunity to interrogate the accused/petitioner in the custody and accordingly, further custodial interrogation of the accused/petitioners seems to be not necessary here in this case.

Accordingly, it is provided that on furnishing a bond of Rs. 20,000/- (Rupees twenty thousand) only each with one surety of like amount to the satisfaction of the learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur, the accused/petitioners, namely, **1. Billal Hussain** and **2. Kurban Ali**, be enlarged on bail, subject to the following conditions:

- (i) that the petitioners shall make themselves available for interrogation by the Investigating Officer as and when required;

- (ii) that 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 him from disclosing such facts to the Court or to any police officer; and
- (iii) that the petitioner shall not leave the jurisdiction of the learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur, without prior permission.

In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant