

GAHC010064932024



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

Case No. : Bail Appln./969/2024

MD. MAJAHARUL ISLAM
SON OF MD KAJIMUDDIN, VILL. SAHARIAPAR, WARD NO 10, P.S.
MOIRABARI, DISTRICT MORIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP, ASSAM

Advocate for the Petitioner : MS N SULTANA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 09.04.2024

Heard Ms. N.K. Nargis, learned counsel for the petitioner. Also heard Mr. D.P. Goswami, learned Additional Public Prosecutor appearing for the State.

2. By filing this bail application under **Section 439 Cr.P.C.**, by the petitioner, namely, **Md. Majaharul Islam** has prayed for bail in connection with

Moirabari P.S. Case No. 18/2024, registered under **Section 120(B)/419/420/406/467/468/471/34 IPC r/w Section 66(C)/66(D) of I.T. Act.**

3. The background of the case is that on 23/01/2024 an FIR was lodged before the Superintendent of Police, Morigaon, alleging *inter alia* that the RUPAY credit card and other credit cards which allow linking of credit card to UPI transaction was introduced by the banks in the year 2023. The credit cards are virtual credit cards and no physical cards were issued by the Axis bank. Subsequently, some frauds were detected on impersonating as genuine customers applied for Axis cards by making fabricated pan cards. On the basis of the FIR, a case was registered vide Moirabari P.S. case no 18/2024.

4. It is submitted by learned counsel for the petitioner that the petitioner was shown arrested on 01/03/2024 in connection with the alleged offence. He was earlier arrested in connection with Jajori P.S. case No. 03/2024 u/s 120(B)/466/468/471 IPC, wherein he was released on bail. Thereafter, he was shown arrested in connection with another case vide Moirabari PS case no 224/2024 u/s 120(B)/419/420/467/468/471/ 406/34 IPC read with section 66(C)/66(D) IT Act on 30/01/2024. Subsequently, the petitioner was arrested in this case.

5. According to the learned counsel for the petitioner, the petitioner is innocent and no way connected with the alleged offence. He has been arrested purely on suspicion. If assuming but not admitting the allegations made against the petitioner are true, then at best, section 66(C)/66(D) of the IT Act are applicable against the petitioner, which are bailable in nature. The learned counsel has referred the case of Sharat Babu Digumarti vs. Government (NCT of

Delhi) reported in (2017) 2 SCC 18, as observed that once the special provisions having the overriding effect, do cover a criminal act and the offender, he gets out of the net of IPC. To note here that, electronic forms of transmission are covered by the IT Act, which is a special law. It is a settled position of law that a special law shall prevail over the general and prior laws.

6. On the other hand, learned Additional Public Prosecutor has produced the case diary and submits that there are sufficient incriminating materials found in the case diary against the petitioner. The petitioner along with the other accused has impersonated the customer by fabricating Pancard and Aadhar. Considering the gravity of the offence, bail may not be granted to the petitioner.

7. The allegation against the petitioner is that the accused/petitioner along with other accused took loan from several platform as well as Axis bank by making forged documents for their personal gain. However, considering the length of detention, bail is granted to the petitioner.

8. Accordingly, the accused-petitioner, named above, shall be released on bail in connection with **Moirabari P.S. Case No. 18/2024**, registered under **Section 120(B)/419/420/406/467/468/471/34 IPC r/w Section 66(C)/66(D) of I.T. Act**, on furnishing bail bond of **Rs.40,000/- with a suitable surety** of the like amount to the satisfaction of learned CJM, Morigaon, Assam.

The direction for bail is further subject to the conditions that the accused-petitioner:

- (a) shall not leave the territorial jurisdiction of learned CJM, Morigaon, Assam, without prior written permission from

him/her;

(b) 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 officer.

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

JUDGE

Comparing Assistant