

GAHC010068862024



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

Case No. : Bail Appln./975/2024

MD SAHIL AHMED AND ANR
S/O SAHAR ALI AHMED
R/O VILL- KHABLAR BHITHA, P.S. BARPETA,
DIST. BARPETA, ASSAM,
PIN-781352.

2: MD. NURUDDIN KHAN
S/O RABI KHAN
R/O VILL- BHUKAMARI
P.S. BARPETA
DIST. BARPETA
ASSAM
PIN-78132

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M KALITA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

19.04.2024

1. Heard Mr. M. Kalita, learned counsel for the petitioners and also heard

Mr. B. Sharma, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioners, namely, (1) Md. Sahil Ahmed and (2) Md. Nuruddin Khan, who have been detained behind the bars since 17.03.2024(for last 32 days), in connection with Pathsala P.S. Case No.28/2024, under Section 379/420/34 of the Indian Penal Code.

3. The gist of accusation in this case is that on 17th March, 2024, one Lakheswar Talukdar had lodged an FIR before the Officer-In-Charge of Pathsala Police Station, *inter alia*, alleging that on 14th March, 2024 while the first informant was withdrawing money from an ATM situated at Pathsala, two unknown persons were standing behind him and when he withdrew Rs. 9,000/- on two occasions of the said ATM, some message was shown on the screen of the ATM and the person standing behind the informant asked the informant to enter the ATM card, again.

4. It is also alleged in the FIR that the second person standing in the ATM booth started typing the numbers on the screen of the ATM monitor and told the informant that the ATM machine is not working and offered the first informant to show him as to how to insert the ATM card and when the informant handed over his ATM card and accordingly, the informant handed over the ATM card to that person. Later on, the informant came to know that a total 51,000/- was withdrawn from his SBI account.

5. On receipt of the said FIR, Pathsala P.S. Case No.28/2024 was registered.

6. The learned counsel for the petitioners has submitted that the petitioners have been detained behind the bars since last 32 days.

7. The learned counsel for the petitioners has also submitted that the notice under Section 41A of the Code of Criminal Procedure, 1973 was not issued to the present petitioner.

8. The learned counsel for the petitioners has also submitted that in this case though the punishment for the offence under which the petitioners have been charged is less than 7 years. However, no notice under Section 41A of the Code of Criminal Procedure, 1973 has been issued to the present petitioners. Moreover, no reasons have been mentioned in the forwarding report regarding why the accused were arrested and forwarded to the learned Judicial Magistrate without issuing notice under Section 41A of the Code of Criminal Procedure, 1973 by the arresting authority. Hence, the learned counsel for the petitioners has submitted that on that ground the petitioners may be allowed to go on bail.

9. On the other hand, learned Additional Public Prosecutor has vehemently opposed the grant of bail to the present petitioners and has produced the case diary of Pathsala P.S. Case No.28/2024.

10. The learned Additional Public Prosecutor has submitted that the petitioners are also detained behind the bars in other similar cases (Patacharkuchi P.S. Case No. 59/2024) and several such incident of duping innocent ATM users have been reported in Pathsala areas.

11. The learned Additional Public Prosecutor has also submitted that the petitioners the learned Chief Judicial Magistrate, Bajali, has also allowed the prayer of the Investigating Officer for the conduct of the Test Identification Parade in this case and therefore, the presence of the accused persons would be necessary for conduct of the Test Identification Parade.

12. I have considered the submissions made by the learned counsel for both the parties and have perused the materials available on record, including

the case diary of Pathsala P.S. Case No.28/2024.

13. It appears from the perusal of the forwarding report that in this case no notice under Section 41A of the Code of Criminal Procedure, 1973 was given to the present petitioners, though under the facts and circumstances of this case, the issuance of notice was required. It also appears that the arresting authority in the forwarding report dated 18.03.2024, has not mentioned the reasons for dispensing with the notice under Section 41A of the Code of Criminal Procedure, 1973. The compliance of issuance of notice under Section 41A of the Code of Criminal Procedure, 1973 is mandatory in view of the observations made by the apex court in the case of "**Satender Kumar Antil Vs. Central Bureau of Investigation & Anr.,**" reported in "**(2022) 10 SCC 51,**". Moreover, it also appears that the petitioners have already been detained behind the bars for last 32 days and though the learned Additional Public Prosecutor has submitted that they may be required for investigating regarding their involvement in other such cases. However, in the instant case there has been a fair progress in the investigation.

14. Considering the above circumstances, the court is of the considered opinion that further custodial detention of the above named petitioners may not be necessary for fair completion of the investigation of Pathsala P.S. Case No.28/2024.

15. In view of above, the above named petitioners are allowed to go on bail of Rs. 50,000/- each with a suitable surety of like amount to the satisfaction of the learned Chief Judicial Magistrate, Bajali with conditions that:-

- i. the petitioners shall appear before the Investigating Officer of Pathsala P.S. Case No.28/2024 once in every week for next four weeks in addition to appearing before the Investigating Officer as and when so required

within the said period for the sake of proper investigation of the case;
and

ii. the petitioners shall not directly or indirectly make any inducement, threat, or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts before the trial court in the trial pending against the present petitioners.

16. With the above observations, this bail application is hereby disposed of.

17. Send back the case diary.

JUDGE

Comparing Assistant