

GAHC010070342024



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

Case No. : Bail Appln./1013/2024

ASIF IKBAL HUSSAIN
S/O NURUL HAQUE
R/O VILL- PITADIPAM
P.S. SARTHEBARI
DIST. BARPETA, ASSAM
PIN- 781352

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. S A AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

10.05.2024

1. Heard Mr. S.A. Ahmed, learned counsel for the petitioner. Also heard Mr. K. Baishya, learned Additional Public Prosecutor appearing for the state of Assam.

2. This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Asif Ikbai Hussain, who has been detained behind the bars, since 17.03.2024(for last 54 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 Later on, the informant came to know that a total 51,000/- was withdrawn from his SBI account.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 petitioner has submitted that the

petitioner has been detained behind the bars since last 54 days.

7. The learned counsel for the petitioner has submitted that the petitioner is in no way involved in the offence alleged in the FIR and he has been detained behind the bars for last 54 days without any fault of his.

8. The learned counsel for the petitioner has also submitted that in the meanwhile, this Court has granted bail to two other co-accused persons, namely, 1. Md. Sahil Ahmed and 2. Md. Nuruddin Khan, by order dated 19.04.2024, passed in Bail Application No. 975/2024. In view of the period of detention already undergone by the present petitioner, the learned counsel for the petitioner has prayed for his bail.

9. On the other hand, learned Additional Public Prosecutor has vehemently opposed the grant of bail to the present petitioner on the ground that several such incident of duping innocent ATM users have been reported in Pathsala area and release of the petitioner would only give indulgence to such offenders, who have been duping innocent citizens.

10. I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on records. In this case, the petitioner has not been named in the FIR and the offence for which he has been charged in the case has prescribed punishment for less than seven years. It also appears that in the meanwhile, two of the co-accused has already been released on bail.

11. In view of the progress made in the investigation as well as the period of detention already undergone by the present petitioner, his further custodial detention does not appear to be necessary, if he co-operates with the Investigating Officer.

12. In view of above, the petitioner, namely Asif Ikbali Hussain, is hereby allowed to go on bail of Rs. 30,000/- with a suitable surety of like amount to the satisfaction of the learned Chief Judicial Magistrate, Bajali with following conditions that:-

- i.** the petitioner 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.** petitioner 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 petitioner.

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

14. Send back the case diary.

JUDGE

Comparing Assistant