

GAHC010080382024



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

Case No. : Bail Appln./1207/2024

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

VERSUS

THE STATE OF ASSAM
REP. BY THE P.P., ASSAM.

Advocate for the Petitioner : MR. S A AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

17.05.2024

Heard Mr. S.A. Ahmed, learned counsel for the accused and Mr. B.B. Gogoi, learned Additional Public Prosecutor for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused namely, **Asif Ikbali Hussain**, who has been languishing in jail hazard, in connection with the **Patacharkuchi P.S. Case No. 59/2024**, under Sections 420/379 of the IPC, for granting bail.

3. The said case has been registered on the basis of an FIR lodged by one Uday Deka, on 19.03.2024. The essence of allegations made in the FIR is that on 08.12.2023, at about 11/12 pm, he has withdrawn money from the SBI ATM situated at Sarupeta, then three unknown persons asked him that one option has displayed in the ATM, then he again put his ATM in the machine to find out his mini statement, but he could not succeed in the same. Thereafter, on 11.12.2023, he came to know that a sum of Rs. 41,000/- were withdrawn from his account, then through his YONO App, he checked his statement and came to know that someone has withdrawn money from the SBI ATM situated at Bhawanipur and then he got to know that the ATM, which was with him belonged to one Bhabesh Muchahari and therefore, he strongly suspects that those three boys could have exchanged his ATM. Thereafter, on 18.03.2024, he came to know that Bajali Police has detained three persons in ATM stealing case and after seeing their photo of them he could recognize those three persons who were involved in his ATM stealing incident.

4. Mr. Ahmed, learned counsel for the accused submits that the accused was shown arrested herein this case on 02.04.2024, and since then he has been languishing in jail hazot for last 46 days and that he was earlier arrested in connection with Pathsala P.S. Case No. 28/2024, under Sections 379/420/34 of the IPC and that he is ready to cooperate with the investigating agency and therefore, it is contended to allow the petition.

5. On the other hand, Mr. Gogoi, learned Additional Public Prosecutor has produced the case diary before this Court and submits that the materials so far collected in the case diary are inadequate to show the complicity of the present accused with the offence.

6. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition as well as the documents placed on record and also perused the Case Diary with the assistance of learned Additional Public Prosecutor.

7. It appears that accused was shown arrested herein this case on 02.04.2024, and since then he has been languishing in jail hazot for last 46 days. Further, it appears that the accused was earlier arrested in connection with Pathshala P.S. Case No. 28/2024, under Sections 379/420/34 of the IPC. It also appears from the case diary that the materials so far collected in the case diary are inadequate to show his complicity with the offence.

8. Having considered above and also considering the period of detention and balancing the same with the nature and gravity of the offence alleged in the FIR, this Court is of the view that further custodial detention may not be warranted in the interest of investigation.

9. Accordingly, it is provided that on furnishing a bond of Rs. 50,000/- only, with one surety of like amount to the satisfaction of the learned **Chief Judicial Magistrate, Bajali Pathsala**, the accused person be enlarged on bail.

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

11. The case diary be returned.

JUDGE

Comparing Assistant