

GAHC010112642024



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

Case No. : Bail Appln./1626/2024

NEKIBUR RAHMAN
S/O ABDUL HAI, R/O WARD NO. 2, LUCHONABORI, P.S.-MOIRABARI, DIST-
MORIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR S M ABDULLAH P

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 14.06.2024

Heard Mr. S.M. Abdullah P, learned counsel for the petitioner. Also heard Mr. R.J. Baruah, learned Additional Public Prosecutor appearing for the State.

2. This is an application made under **Section 439 Cr.P.C.**, seeking bail

by the petitioner, namely, **Nekiur Rahman**, in connection with **Moirabari P.S. Case No. 74/2024**, registered under **Section 120(B)/419/420/467/468/471/34 IPC r/w Section 66(C)/66(D) of I.T. Act.**

3. The background of the case is that on 15.05.2024 an FIR was lodged before the Officer-in-Charge of Moirabari police station, alleging *inter alia* that accused No. 1 has been running an illegal racket where he morphed the image of people from different locations across the country and fraudulently creates numerous identities in order to gain wrongful loans from different finance companies by using electronic devices such as mobile phone, computer/laptops and other fake documents as cyber crime. During investigation, it came to know that the accused No. 1 along with other two co-accused has running this kind of illegal activities. On being searched, one laptop, 13 numbers of mobile handsets, 15 numbers of debit cards, 20 numbers of jio sims, one aircel sim, 4 numbers of airtel sims, 33 numbers of Vodafone sims and 122 numbers of BSNL sims were recovered. On the basis of the FIR a case was registered vide Moirabari P.S. case No. 74/2024.

4. It is submitted by learned counsel for the petitioner that the petitioner is no way involved in the instant case. It is also submitted that there is allegation against the FIR named accused Nos. 2 and 3 and the petitioner was arrested only on suspicion without any valid reasons and nothing was recovered from his possession. It is also submitted that the petitioner has been detained in custody since 16.05.2024.

5. The learned counsel for the petitioner has further submitted that assuming not admitting the allegations made against the petitioner are

true, then at best section 66(C)/66(D) of I.T. Act are applicable against the petitioner which are bailable in nature and other section of IPC is not applicable against him.

6. The learned counsel has referred the case of Sharat Babu Digumarti vs. Government (NCT of Delhi) reported in (2017) 2 SCC 18, wherein it was observed that once the special provisions having the overriding effect to cover a criminal act and the offender, he gets out of the net of IPC. The electronic forms of transmission are covered by the I.T. 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. According to learned counsel, considering the background of the case as well as length of detention, the petitioner may be enlarged on bail.

7. 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 co-accused have involved in impersonating others by fabricating Pancard and Aadhaar Card. Considering the gravity of the offence, bail may not be granted to the petitioner.

8. On perusal of case diary, it reveals that the accused/petitioner works along with Wajibur Rahman, Ajibur Rahman and other co-accused for last couple of years, took huge amount of loan from various financial institutions by using fake Aadhaar card and PAN Card of different persons. Investigation is on the initial stage.

9. In view of the above, this Court is not inclined to grant bail to the

petitioner at this stage of investigation. Accordingly, bail prayer of the petitioner is **rejected**.

10. The bail application stands disposed of accordingly.
11. Return the case diary.

JUDGE

Comparing Assistant