

GAHC010221832024



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

Case No. : Bail Appln./3259/2024

BIJU DAS AND 2 ORS
S/O LATE SATYENDRA NATH DAS
R/O KRISHI COLLEGE AREA,
KHANAPARA, DIST. KAMRUP (METRO), ASSAM
PIN-781022
PH. 96784-24277

2: HEMANTA HAZARIKA
R/O HOUSE NO. 84
SIX MILE CHACHAL
VIP ROAD
BYLANE NO. 2
P.S. DISPUR
GUWAHATI-781022
DISPUR GUWAHATI- 781022
DIST. KAMRUP (M0
ASSAM
PH. NO. 8811062506

3: MINTU DAS
S/O JAGANNATH DAS
R/O HOUSE NO. 34
GPALNAGAR
NOONMATI

P.O. NOONMATI
P.S. NOONMATI
GUWAHATI

DIST. KAMRUP (M)
ASSAM-781020
PH. 690160681

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. B D KONWAR SR. ADV., MR P DOLEY, MS M
ZOMUANPUII, MR J SINGH, MRS J M KONWAR

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

24.10.2024

1. Heard Mr. B.D. Konwar, learned Senior Counsel for the petitioners (i) Biju Das, (ii) Hemanta Hazarika, and (iii) Mintu Das, who has filed this application under Section 483 of the BNSS, 2023 with prayer for bail as they are behind bars since 21.08.2024 in connection with Dispur Police Station Case No. 517/2024 under Sections 120(B)/403/420/406/409/477A of the Indian Penal Code, 1860.
2. Heard Mr. K. K. Das, learned Additional Public Prosecutor, Assam for the respondent State.
3. The FIR unfolds that the Hitachi Cash Management Services Pvt. Ltd. (HCMSPL for short) is a cash replenishment agency offering services of cash replenishment to bank ATMs. Along with cash replenishment, other services like cash transportation, cash management, ATM servicing etc. are also provided. It is alleged that in respect of the said services, the reconciliation team received debits for Rs.1,94,98,200/- (Rupees One Crore Ninety Four Lacs Ninety Eight

Thousand and Two Hundred) from MSP regarding customer claims of multiple ATMs allocated to the custodians/ATM operators, who were handling the ATM's of MSP.

4. An investigation was conducted when such huge transaction had surfaced and it was unearthed that the aforementioned amount of money was misappropriated by the custodians. It is averred that as per the process, the ATM operators load money in the ATMs as per the Managed Service Provider (MSP) indent. After loading cash in the ATMs, the operators have to submit EOD reports of that particular day with all the supporting feedback relating to overage/shortage found during that particular day on a real-time basis as the operators are responsible for the management of the ATMs. It is contended that the ATM operators did not declare the overage amount and did not deposit the same to the company thereby committing misappropriation of funds. After a comprehensive audit, involvement of several ATM operators and the Branch Manager, Mr. Ajay Kumar Viswawarma was unearthed. The name of the Branch Manager including the name of 54 (Fifty Four) such ATM operators has been mentioned in the FIR. The petitioners are ATM operators.

5. It is submitted that in an omnibus manner, all these ATM operators have been roped in connection with this incident. The subject of the FIR clearly reveals that the Branch Manager is responsible for siphoning of the funds in a surreptitious manner. It is also submitted on behalf of the petitioners that the Branch Manager has already been arrested in connection with this case.

6. Learned Additional Public Prosecutor has raised serious objection stating that the anticipatory bail petition of the petitioner i.e., Biju Das was earlier rejected after perusal of the Case Diary as there were incriminating materials in the Case Diary against the petitioner. Case Diary is necessary to consider the

bail petition as this offence is of a serious nature.

7. I have considered the submissions at the Bar with circumspection.

8. The petitioners are behind bars since 21.08.2024.

9. The Case Diary reveals that investigation has also progressed to a considerable extent. The relevant documents have been seized in connection with this case. There appears to be no apprehension of interpolation of documents, including digital documents.

10. It appears that investigation may not be adversely affected if the petitioners are admitted to bail.

11. Considering all aspects and in view of my foregoing discussions, petition is allowed. The petitioners are enlarged on bail of Rs 50,000/- (Rupees Fifty thousand) each, with a local surety of like amount to the satisfaction of the learned CJM, Kamrup (Metro), Guwahati under the conditions that:

- (i) the petitioners shall refrain from such activities with which they are alleged,
- (ii) the petitioners shall not interpolate or tamper with the evidence,
- (iii) the petitioners shall appear before the I.O. on every fortnight, till completion of investigation, and
- (iv) the petitioners shall not leave the jurisdiction of the Court without prior permission.

On breach of any of the bail conditions, bail order shall automatically stand cancelled.

JUDGE

Comparing Assistant