

GAHC010279012023



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

Case No. : AB/4171/2023

FAKRUL ISLAM BARBHUIYA
S/O- ARJAMAND ALI BARBHUIYA,
VILLAGE -BILPAR DHUMKAR,
P.O- RANGAUTI,
P.S- HAILAKANDI,
DIST- HAILAKANDI, ASSAM, PIN-788155

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR S BORTHAKUR

Advocate for the Respondent : PP, ASSAM

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
O R D E R

04.01.2024

Heard Mr. S Borthakur, learned counsel for the petitioner. Also heard Mr. D Das, learned Additional Public Prosecutor, Assam.

2. The petitioner, namely, Fakrul Islam Barbhuiya has approached this court for

the second time praying for grant of pre arrest bail, who is apprehending arrest in connection with Hailakandi PS case No. 232/2023 registered under Section 120-B/403/409/420/387/506/34 IPC.

3. This court after perusal of the case diary rejected such prayer for the petitioner for grant of pre arrest bail under its order dated 16.10.2023 passed in AB 3389/2023, after finding that sufficient incriminating materials are available against the petitioner in the case diary.
4. Under its order dated 12.12.2023, this court had again called for the case diary. Accordingly, the case diary has been produced by the learned Additional Public Prosecution
5. Mr. Borthakur, learned counsel for the petitioner has argued that the beneficiary of the alleged fraud has already been granted anticipatory bail and therefore parity demands that the petitioner shall also be granted bail. It is the further case of the petitioner that the petitioner is not regular employee of the bank to commit alleged illegal transfer.
6. This court has again gone through the case diary. The materials so far collected are suggestive that the petitioner is a member of a group called Joint Liability Group dealing with grant of loan to different beneficiaries in collaboration with the bank. The material further suggest that an amount of Rs. 8,00,000/- was handed over to the petitioner by one Fajlul Hoque Laskar for disbursement of loan to three persons. However, such loan was not disbursed. When refund of such money was demanded, an amount of Rs. 7,30,000/- was fraudulently transferred to the account of one Azizur Rahman Laskar from the account of the informant. The CC TV footage collected also suggestive of involvement of the petitioner. Therefore, in the aforesaid backdrop, this court do not find any favour in the argument of the learned counsel for the petitioner regarding the parity inasmuch as the two accused are totally on different footings. This court

has also considered the stage of investigation, which also suggests that the custodial interrogation of the petitioner may be necessary.

7. Yet another aspect of the matter is that this court has not found any new grounds, which were not available when the bail was rejected by this court under its order dated 16.10.2023 passed in AB 3389/2023.
8. That being the position, the prayer of bail for the petitioner stands rejected. However, while parting with the record, it is made clear that the observations made in this order is for the purpose of consideration of the prayer of bail only and the same should not be treated as affirmation of merit of the prosecution case.
9. With the aforesaid determination and observations, this bail application stands dismissed.
10. Case diary be returned back to the learned Additional Public Prosecutor.

JUDGE

Comparing Assistant