

Party Name : RIMPAL DEBBARMA & ANR Vs THE STATE OF TRIPURA

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HONBLE THE CHIEF JUSTICE DEEPAK GUPTA

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This is an application filed by the petitioners for grant of anticipatory bail in respect of FIR No.186 of 2014 registered with West Agartala Police Station under sections 454/380 of the Indian Penal Code (IPC) and 66(C)(D) of the Information Technology Act, 2000.

The allegations in the FIR are that one Ritesh Debbarma filed a complaint that his ATM card issued by State Bank of India, TLA House Branch, Colonel Chowmuhani had been misused by somebody and a sum of Rs.7,20,350/- had been either withdrawn by using the said card or the amount had been spent for purchase of items against the said card.

According to the complainant, he had gone to Kolkata and stayed there from 03-10-2014 to 05-10-2014 with the present petitioners who are his cousins. On 06-10-2014 the complainant returned to Agartala and when on 14-10-2014 the complainant went to the ATM to withdraw money, he found that the ATM card was missing from his wallet. He rushed to the Bank and found that Rs.7,20,350/- had been withdrawn/used against the said card. The case of the complainant further was that one Somnath Mukherjee, fiancé of petitioner No.1, may have used the said card and according to him, the PIN of the ATM card was saved in the mobile phone of the complainant and in Kolkata he had seen Somnath Mukherjee browsing through his mobile phone. Thereafter, the police investigated the matter and according to the investigation, some jewellery was purchased from a jewellery firm in Kolkata by use of the said card and at the time when the jewellery was purchased, the present petitioners were accompanying the main accused Somnath Mukherjee. This is the only evidence against the petitioners.

Assuming for the sake of argument that the allegations are absolutely correct, then also the prosecution still has to prove that the petitioners were aware that Somnath Mukherjee was using a card which was not his. Merely because they were accompanying Somnath Mukherjee when he was using the card would not make them accessories to the crime.

At this stage, it may also be pointed out that even if these allegations are accepted to be absolutely correct, I do not see how any offence under section 454 of IPC has been made out. There is some dispute with regard to the jurisdiction of the police at Agartala to investigate such a crime because though the card may have been issued at Agartala, even as per the prosecution the card was stolen at Kolkata and used at Kolkata.

It is made clear that this Court is not expressing any final opinion on the merits of the case or even on the issue of jurisdiction. These facts have only been stated for the purpose of deciding this bail application and nothing else.

In this view of the matter, it cannot be said with certainty that the petitioners are guilty of having committed the offence since alleged. Even otherwise, the offences under section 66(C)(D) of the Information Technology Act, 2000 are bailable and the only non-bailable offence made out is under section 380 of IPC. There is no allegation that the card was stolen by the petitioners.

The petitioners are ladies. They are working women. It is, therefore, ordered that in the event of their arrest, the petitioners shall be enlarged on bail on their furnishing a bail bond in the sum of Rs.10,000/- (rupees ten thousand) with one surety each in the like amount to the satisfaction of the Arresting Officer subject to the following terms and conditions:-

(i) That, the petitioners shall when summoned by the Investigating Officer appear before the Investigating Officer at Tripura. It is, however, made clear that since the petitioners are ladies, some lady police official must be present when they are interrogated. Since the petitioners are working at Kolkata, they shall be called to Agartala only once for the purpose of interrogation and thereafter, if they are required to be interrogated, the police officials shall interrogate them at Kolkata;

(ii) The petitioners are further directed not to tamper with or in any manner influence the prosecution witnesses;

(iii) The petitioners are further directed not to in any manner try to influence any of the prosecution witnesses;

(iv) The petitioners are further directed not to cause any hindrance in the investigation;

(v) In case, the petitioners violate any of the conditions or try to delay the trial the prosecution shall be at liberty to apply for cancellation of bail.

On the petitioners filing application for supply of the copy on payment of appropriate fees, the copy of the same shall be supplied to the petitioners by tomorrow.