

GAHC010062252024



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

Case No. : Bail Appln./866/2024

MD. INAMUL ALI
S/O SAHED ALI
R/O VILL- CHABOTI
P.O. CHABOTI
P.S. NORTH LAKHIMPUR
DIST. LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM.

Advocate for the Petitioner : MR. B CHOWDHURY

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 03.04.2024

- 1)** Heard Mr. B. Chowdhury, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State respondent.
- 2)** This application under Section 439 of the Code of Criminal Procedure,

1973 has been filed by the petitioner, namely, Md. Inamul Ali who has been detained behind the bar since 13.03.2024 (for the last 22 days) in connection with North Lakhimpur P. S. Case No. 56/2024 corresponding to G. R. Case No. 174/2024 under Section 120 B/406/420 of the Indian Penal Code.

3) The gist of the accusation in this case is that on 12.03.2024 one Rajib Kalita had lodged an FIR before the Officer-In-Charge of North Lakhimpur Police Station. The FIR is as follows:

“With reference to the subject cited above I have the honour to report that on 11/03/2024 AT 05:00 PM an Ejahar received from SP Office Lakhimpur through Vide RCB No. 344(PG), Dated 08/03/2024 and made a GDE Vide Khelmati TOP G.D.E No. 245, Dated 11/03/2024, in that ejahar complainant Safikul Islam, Age-25 Years, S/O- Md. Hafijuddin, of Chukulibhoria, P.O- Chaboti, P.3- North Lakhimpur, Dist- Lakhimpur, Assam stating that on 05/03/2024 at 09:00 PM he purchased an Mahindra Bolero Maxx Pick Up HD 1.7LX from Biswanath Ashok Auto LLP, Town Bantow which was financed by Mahindra Finance. The complainant took Gautam Bora with him as his driver. When the sales executive Jagadish Saikia delivered the vehicle to the complainant, the alleged accused namely (1) Nasir All, R/O- Rongajan, P.O- Borbeel, P.5- NL, Dist- Lakhimpur, Assam, (2) MofidulIslam, R/O- Bangalmora, PO Bongalmora, P.S- Laluk, Dist- Lakhimpur, Assam and (3) Md. Nasir Ahmed, S/O- Mofidul Islam, of Chabott bypass, P.O- Chaboti, P.S- NL, Dist- Lakhimpur, Assam met the complainant at the said dealer and the said vehicle was driven by Nasir All and the three alleged accused ordered to drive the other vehicle which was brought by Nasir All to Gautam Borah then they were discussing about taking the new vehicle to Kharupetia Sabji Market. On the way to Kharupetia, at Laluk the three accused took seat in the new vehicle and when it reached Badardewa the three accused persons attacked the complainant by iron rod and get him off from the vehicle, restrained him to not inform to police at Badardewa upto 11 at night, after that they entered to Arunachal Pradesh by Bandardewa gate. The complainant also stated that when Gautam Borah tried to help the complainant, he also got beaten by the three persons and they also took Gautam Bora with them. The complainant mentioned in the ejahar that, for the

purchasing of the vehicle the elder sister of the complainant namely Hafija Begum gave money and also told the sales executive Jagadidh Saikia of Biswanath Ashok Auto LLP that she will be present at the time of delivery and requested to not give delivery to another person. But the sales executive Illegally gave Information to the alleged accused persons by whatsapp about the delivery and he was also responsible for what happened next."

4) It is also submitted by the learned counsel for the petitioner that the petitioner is not named in the FIR and though the offence under which this case has been registered is under section 406/120B/420 of the Indian Penal Code. The maximum punishment of the aforesaid offence is not more than 7 years and therefore as per the guidelines of the Apex Court in "**Arnesh Kumar Vs State of Bihar**" reported in **(2014) 8 SCC 273**, the issuance of notice under Section 41-A of the Code of Criminal Procedure is mandatory.

5) However, in the instant case no such notice was issued to the present petitioner and he has been behind the bar for the last 22 days and therefore, prayer for bail has been made.

6) On the other hand, learned Additional Public Prosecutor has opposed the grant the bail to the present petitioner and has submitted that there is a racket involving accused persons and leader of the said racket is one Forjul Ali and the modus-operandi of the said racket is to purchase the vehicle on the bank finance and thereafter they used to sell those vehicles, lodging false FIR regarding theft of the said vehicle.

7) It is submitted by learned Additional Public Prosecutor that to unearth the whole racket, involved in the offence of such nature, which is committed in organized manner, the custodial interrogation of the present petitioner would be necessary.

8) I have considered the submission made by learned counsel for both the

sides and have perused the materials on record including the case diary of North Lakhimpur P. S. Case No. 56/2024.

9) In this case it appears that the petitioner has been detained behind the bar for the last 22 days and apparently the offence involved in this case have arranged which is less than 7 years and therefore, mandate of issuance of notice under Section 41-A of the Code of Criminal Procedure, 1973 is applicable in this case, which has not been followed in this case.

10) In "*Satender Kumar Antil Vs CBI*" reported in **2022 (10) SCC 51**, the Apex Court of India has observed that non-compliance of Section 41-A in cases where same is required would entitle the accused person to get bail on that ground only.

11) Considering the above observation of the Apex Court as well as considering the period of detention already undergone by the present petitioner, this Court is of the opinion that the petitioner is entitled to get bail in this case.

12) In view of the above, the petitioner, namely, Md. Inamul Ali is hereby allowed to go on bail of Rs. 30,000/- (Rupees Thirty Thousand only) with one surety of like amount subject to the satisfaction of the learned Chief Judicial Magistrate, North Lakhimpur with the following conditions:

- i. That the petitioner shall cooperate in the investigation.
- ii. That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts of the case before the Investigating Officer.

With the above observation, this bail application is accordingly disposed of.

JUDGE

Comparing Assistant