

GAHC010117592023



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

Case No. : AB/1946/2023

DILWAR HUSSAIN @ KUTI AND ANR
S/O- LT. MOTHlubur RAHMAN, R/O- DIGHIRPAR, P.S. BADARPUR, DIST.-
KARIMGANJ, ASSAM

2: GULZAR HUSSAIN @ PHETU
S/O- LT. MOTHlubur RAHMAN
R/O- DIGHIRPAR
P.S. BADARPUR
DIST.- KARIMGANJ
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY P.P., ASSAM

Advocate for the Petitioner : MR. J I BORBHUIYA

Advocate for the Respondent : PP, ASSAM

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

22-06-2023

Heard Mr. J. I. Borbhuiya, learned counsel for the petitioners and Mr. M. P. Goswami,
learned Additional Public Prosecutor, Assam for the State.

By this application under Section 438 CrPC, the petitioners, namely, **1) Dilwar Hussain @ Kuti** and **2) Gulzar Hussain @ Phetu** apprehending their arrest are seeking pre-arrest bail in Badarpur P.S. Case No.97/2023 registered under Sections 22(C)/29 of the NDPS Act, corresponding to G.R. No.821/2023.

Brief facts of the case is that on receipt of specific information on 08.04.2023, on 09:45 pm from reliable source, regarding the dealing of illegal Narcotic Contraband to be done at "Borof Kol-Digirpar Area" under the jurisdiction of Badarpur Police Station by two suspects (i) Dilwar Hussain @ Kuti and (ii) Gulzar Hussain @ Phetu of Digirpar. After making a G.D. Entry and informing the Superior Officers over call entering it in the General Diary and being authorised by the Officer-in-Charge of Badarpur Police Station i.e., the concerned Inspector of Police to conduct search, seizure and arrest, if any, Narcotic Contraband found by making a G.D. Entry, the informant Sub-Inspector of Badarpur Police Station with weighing machine and other packaging materials along with other police personnel left for "Borof Kol-Digirpar Area" on 08.04.2023 at 10:00 pm by making necessary entry in the diary.

After arrival in the said area it was seen that a private Bolero vehicle AS-01-BF-5609 driven by Dilwar Hussain at 10:20 pm on 08.04.2023 reached the said "Borof Kol-Digirpar Area" and police found both the suspects containing bags were ready for dealing. When police started approaching towards them, noticing police those two suspects ran away by throwing the bags near the road side and the police personnel chased the suspects but somehow they managed to escape. Before starting the search to the dumped/thrown away packets three independent witnesses present there were called and in their presence, search was made showing their identities and search procedure was initiated for those packets. In presence of those three witnesses complying the provision of the NDPS Act two packets of yellow and black each containing suspected yaba tablets were recovered one yellow black packet containing 5 small packets, each such small packets containing 10 pouch each where each pouch contained around 200 tablets weighing 23.00 grms.

The other recovered yellow black packets contained 4 smaller packets, each smaller packet contained 10 pouch each and each pouch contained about 200 tablets weighing around 23 grams which were marked accordingly and altogether, 2600 grams equal to 2.6 Kgs of suspected Yaba Tablets were recovered seized and wrapped in presence of those

witnesses along with one recovered blue black cloth bag brand Sh-rife men's wear used for storing the packets of Yaba Tablets which were accordingly deposited in the police malkhana by making the necessary in the diary following the due process.

The petitioners are FIR named accused persons.

Mr. Borbhuya, learned counsel appearing for the petitioners placing the reliance of Hon'ble Apex Court in the case of *Mohd. Muslim @ Hussain Vs. State (NCT of Delhi) [Special Leave Petition (Crl.) No(s).915/2023]* deiced on 28.03.2023, order dated 10.04.2023 passed by a co-ordinate Bench of this Court in BA No. 513/2023 submitted that the petitioners are no way connected with the case and only on mere suspicion police cannot apprehend them without complying with the provision of Section 42 and 50 of the NDPS Act. Hence, their application for pre arrest bail in said Badarpur P.S. Case No.97/2023 corresponding to G.R. No.821/2023.

Perused the case diary place before the Court today by Mr. K. K. Parasar, learned Additional Public Prosecutor, Assam.

Case diary reveals that the three seizure witnesses were present when police arrived at "Borof Kol-Digirpar Area" around 10:00 pm on 08.04.2023 and also witnessed that police personnel ran towards two persons who after noticing police dumped the bags and ran away and recovered the bag with yellow colour packets in their presence by preparing a seizure list in which they had given their signatures which the police informed them that those were Yaba Tablets.

Case diary also reveals that CDR analysis of the phone numbers of the accused persons which they collected that one of the accused shows the one particular tower location on 08.04.2023 from 15:24 hours to 01:09 hours of 09.04.2023 at Digirpar Area and after 01:08 am of 09.04.2023, i.e., immediately after the seizure the accused switched of their mobile contacts.

With regard to the tower location of the other mobile on 08.04.2023 at 21:35 hours was shows at Bundashil and at 22:19 hours it was shown at Digirpar and that these two CDRs corroborates the presence of the accused persons at Digirpar Area during commission of the offence at the relevant point of time.

The concerned Investigating Officer have objected the bail of the petitioners clarifying that if the petitioners are enlarged on bail there is every possibility that they may temper and/or try to conceal and/or damage valuable evidence of the case, shall hamper the process of investigation and may induce/manipulate/threat the witnesses and that there is every possibility that both the accused persons may try to commit/repeat such heinous offences.

Perused and considered the judgment of the Hon'ble Apex Court, noted above.

Investigation of the case is in the nascent stage and there are sufficient materials against the petitioner with regard to their involvement in the alleged crime. As such, the judicial pronouncements placed by Mr. Barbhuiya on behalf of the petitioners at this stage cannot be said to be applicable for the petitioners.

For the reasons above and finding sufficient materials in the case diary against the petitioners the Court is of the view that it is not a fit case to grant pre arrest bail as prayed for, to the petitioners, namely, **1) Dilwar Hussain @ Kuti** and **2) Gulzar Hussain @ Phetu** in said Badarpur Police Station Case No.97/2023 registered under Sections 22(C)/29 of the NDPS Act, corresponding to G.R. No.821/2023 and accordingly, stands rejected.

Return the case diary herewith.

JUDGE

Comparing Assistant