

GAHC010222872023



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

Case No. : AB/3430/2023

ABUL KHAYER @ ABU KHAYER AND 6 ORS
S/O LATE MONIRUDDIN
R/O VILL- NO. 2 AHMEDPUR
P.O. ISLAMGAON, MOUZA- LALUK
P.S. BIHPURIA, PIN-787054
DIST. LAKHIMPUR, ASSAM

2: NURJAHAN BEGUM
W/O ABUL KHAYER
R/O VILL- NO.2 AHMEDPUR
P.O. ISLAMPUR
MOUZA- LALUK
P.S. BIHPURIA

PIN-787054
DIST. LAKHIMPUR
ASSAM

3: WAHIDA BEGUM
W/O SADDAM HUSSAIN
R/O VILL- NO. 2 AHMEDPUR
P.O. ISLAMGAON
MOUZA- LALUK
P.S. BIHPURIA
DIST. LAKHIMPUR
ASSAM
PIN-787054

4: GULJAR HUSSAIN
S/O ABDUL AZIZ
R/O VILL- NO. 2 AHMEDPUR
P.O. ISLAMGAON
MOUZA- LALUK
P.S. BIHPURIA

DIST. LAKHIMPUR
ASSAM
PIN-787054

5: ASMA KHATUN
W/O MOSTUFA ABUL BASHAR
R/O VILL- NO. 2 AHMEDPUR
P.O. ISLAMGAON
MOUZA- LALUK
P.S. BIHPURIA
DIST. LAKHIMPUR
ASSAM
PIN-787054

6: ABDUL RAHMAN @ ABDUR RAHMAN
S/O LATE MONIRUDDIN
R/O VILL- NO. 2 AHMEDPUR
P.O. ISLAMGAON
MOUZA- LALUK
P.S. BIHPURIA
DIST. LAKHIMPUR
ASSAM
PIN-787054

7: FARUK HUSSAIN
S/O ABDUL RAHMAN BHUYAN
R/O VILL- NO. 2 AHMEDPUR
P.O. ISLAMGAON
MOUZA- LALUK
P.S. BIHPURIA
DIST. LAKHIMPUR
ASSAM
PIN-78705

VERSUS

THE STATE OF ASSAM
REP. HEREIN BY ITS PP, ASSAM

Advocate for the Petitioner : MR G CHAMUAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

09.11.2023

Heard Mr. G. Chamuah, learned counsel for the petitioners. Also heard Mr. M.P. Goswami, learned Addl. Public Prosecutor, Assam appearing for the State respondent.

This petition under Section 438 Cr.P.C., is filed for granting the privilege of pre-arrest bail to the petitioners, namely **1) Abul Khayer @Abu Khayer 2) Nurjahan Begum 3) Wahida Begum 4) Guljar Hussain 5) Asma Khatun 6) Abdul Rahman @Abdur Rahman and 7) Faruk Hussain**, apprehending arrest in connection with **Laluk P.S. Case No. 172/2023** registered u/ss **146/147/325/326/307/353/506/224** of the IPC read with Sections **21(a)/21(b)/29** of the NDPS Act.

The Case diary, as called for, is placed before the Court.

It may be mentioned that by order, dated 11.10.2023, this Court granted the privilege of interim pre-arrest bail to the petitioner No.3, namely Wahida Begum subject to conditions.

The brief facts of the case are that on 07.09.2023, the informant SI (P) Chiranjip Baruah of Harmoti OP lodged an FIR alleging, *inter alia*, that on 06.09.2023 at about 1.20 am, information was received from VDP member of No1 Boishnabpur village that they apprehended a person namely Sanjay Das with a container containing suspected to be heroin and a vehicle bearing regd. No- AS 07BC 1013. After receiving the information, the informant along with staff reached Baishnabpur village and seized one vial containing suspected Heroin which was recovered by VDP Member weighing 1.1 gram along with one

mobile phone and vehicle. During interrogation the accused person namely Sanjay Das stated that he brought the seized container from a person namely Md Iman Ali. Accordingly, the informant along with staff proceed to Bongalmara and apprehended Md. Iman Alli. During interrogation Iman Ali stated that one packet of suspected heroin was there in the possession of Md. Tota Miya. Accordingly, Md. Tota Miya was apprehended by police and recovered and seized one soap case containing suspected Heroin weighing 11.6 grams and a motorcycle bearing Registration No. AS-07-T-2306. On the basis of the statement of Md. Tota Miya, police apprehended another drug dealer namely Md. Saddam Hussain and recovered 2 Nos. of soap case containing Heroin. It is alleged that at that moment, the apprehended person, his family members and nearby people attacked on the police party with dao, lathi, sharp weapon etc. and both the persons managed to flee away from police custody. The police staff of Laluk PS sustained grievous injury on various parts of their body.

The injury report shows that the injured persons sustained simple injury caused by blunt weapons.

Perusal of the case diary reveals that the arrested accused Tota Miya and Saddam Hussain are the prime accused who deals in illegal trade of drugs. Total 24.86 grams of suspected heroin was seized from the possession of accused Tota Miya. There is prima facie clear evidence that the petitioners collectively assaulted the police party and they were involved in illegal business of drugs.

In the backdrop of facts and materials available on the case diary, this Court finds it not a fit case to grant the privilege of pre-arrest bail to the petitioners.

Accordingly, the pre-arrest bail application of the petitioners stands **rejected** except the **petitioner No.3, namely Wahida Begum**, who is in the

advance stage of pregnancy vide Annexure-3, the medical report and who was granted the privilege of interim pre-arrest bail vide order, dated 11.10.2023.

The interim pre-arrest bail granted to the **petitioner No.3, namely Wahida Begum** vide order, dated 11.10.2023 is hereby made absolute, subject to the following conditions-

- (i) That the petitioner No.3 shall appear before the investigating officer within 7(seven) days from the date of this order and get her statement recorded under Section 161 Cr.P.C., if not already recorded, failing which, on and from the 8th day, this order shall have no force; and
- (ii) That the petitioner No.3 shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

Return the case diary.

This disposes of the anticipatory bail application.

JUDGE

Comparing Assistant