

GAHC010000382024



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

Case No. : AB/26/2024

ABUL KHAYER @ ABU KHAYER AND ANR
S/OLATE MONIRUDDIN
R/O VILL- NO. 2 AHMEDPUR
P.O. ISLAMGAON
P.S. BIHPURIA
DIST. LAKHIMPUR, ASSAM
PIN-787054

2: NURJAHAN BEGU
W/O ABUL KHAYER @ ABU KHAYER
R/O VILL- NO. 2 AHMEDPUR
P.O. ISLAMGAON
P.S. BIHPURIA DIST. LAKHIMPUR
ASSAM PIN-78705

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MAHIBUR RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
ORDER

22.01.2024

Heard Mr M Rahman, learned counsel for the petitioners, 1) Abul Khayer @ Abu

Khayer, and 2) Nurjahan Begum.

2. The petitioners have filed this application under Section 438 CrPC, with prayer for pre-arrest bail, as they are apprehending arrest in connection with Laluk PS Case No. 172/2023, under Sections 146/147/325/326/307/ 353/506/224 IPC, read with Sections 21(a) and 21(b)/29 of the NDPS Act.

3. Heard Mr M P Goswami, learned Additional Public Prosecutor for the State of Assam.

4. It is submitted on behalf of the petitioners that the petitioners are the parents of the prime accused, Saddam Hussain. Being elderly persons, they will suffer immensely if they are forwarded to custody.

5. It is submitted that the petitioners are not liable for the offence under Sections 21(a) and 21(b)/29 of the NDPS Act. The prime accused, Tota Miya and Saddam Hussain have already been granted bail in connection with this case.

6. The learned Additional Public Prosecutor has raised serious objection stating that the when the Police went to Saddam Hussain's house during investigation, the present petitioners, along with other villagers assaulted the Police, causing injuries on the vital parts of their body and deterring the Police officials from discharging their duty. When a person named Sanjay Das was apprehended with heroin, he revealed the names of Tota Miya and Saddam Hussain, who used to supply contraband to Sanjay Das.

7. Per contra, learned counsel for the petitioners has submitted that the elderly

petitioners are not responsible for drug peddling. As they are the parents of the main accused, they have been falsely implicated by the Police Personnel.

8. I have considered the submissions at the Bar with circumspection.

9. I have also perused the Case Dairy.

10. The petitioners are elderly citizens. They have pledged to cooperate with the investigation as well as trial. They are willing to abide by any bail conditions, if imposed upon them.

11. The investigation has also progressed to a considerable extent.

12. I have also considered the submission that the prime accused have already been enlarged on bail.

13. Considering all aspects and in view of my foregoing discussions, petition is allowed. In the event of their arrest, the petitioners shall be enlarged on bail of Rs. 50,000/- each, with one suitable surety each of the like amount to the satisfaction of the arresting authority, under the conditions that-

- i) the petitioners shall appear before the IO within 10 days and cooperate with the investigation, ii) the petitioners shall not exercise any threats to witnesses, and
- ii) the petitioners shall not leave the jurisdiction of the Court without prior permission, till completion of investigation and trial.

On breach of any of the bail conditions, the bail order shall stand cancelled.

14. Anticipatory Bail Application stands disposed of.
15. Send back the Case Diary.

JUDGE

Comparing Assistant