

GAHC010080652024



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

Case No. : Bail Appln./1139/2024

MAMTUL ALI AND 3 ORS
S/O SAHANUR ALI,
RESIDENT OF VILLAGE UDIANA BALAGAON, PS RANGIA, DIST KAMRUP

2: MD. SAFIQUL ALI
S/O MD. ISLAM ALI

RESIDENT OF VILLAGE ISLAMPUR
RANGIA
PS RANGIA
DIST KAMRUP

3: MD. AYNUL HOQUE
S/O MR. FAZIR ALI
RESIDENT OF BALA BANGAON
PS RANGIA
DIST KAMRUP

4: RAJU ALI
S/O MAHTAB ALI

RESIDENT OF VILLAGE GHOPLA
PS KAMALPUR
DIST KAMRU

VERSUS

THE STATE OF ASSAM
REP BY THE PP ASSAM

Advocate for the Petitioner : MS. T SOM

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 29.05.2024

Heard Mr. M. Biswas and Ms. T. Som, learned counsels for the petitioners. Also heard Mr. R.J. Baruah, learned Additional P.P. representing the State of Assam.

2. This is an application made under **Section 439 Cr.P.C.**, seeking bail by the petitioners, namely, **Mamtul Ali, Md. Safiqul Ali, Md. Aynul Hoque and Raju Ali**, in connection with **STF P.S. Case No. 17/2023**, registered under **Section 18(b), c (25)/29 of NDPS Act, 1985**.

3. The brief fact of the case is that on 08/11/2023, on receipt of an information regarding transporting of Narcotic substances from Manipur to lower Assam districts in a Bolero pickup vehicle bearing No. AS-01-QC-9956, a search operation was conducted. Accordingly, the vehicle was intercepted at Amingaon. On being searched, thirty six packets of opium were recovered weighing about 1.035 kgs. Accordingly, the driver of the vehicle along with other accused/petitioners were arrested and the contrabands were seized.

4. Mr. Biswas, learned counsel for the petitioners, has only stressed his argument on the point that the accused/petitioners were arrested on 08/11/2023 and the charge-sheet was submitted on 09/05/2024, which is

beyond the mandatory period of 180 days. Though it is reflected from the charge-sheet that the charge-sheet was ready on 03/05/2024 but the same was produced before the Special Judge on 09/05/2024 for taking cognizance. As such the petitioners are entitled for default bail.

In support of his submission, learned counsel has placed reliance on the following case law –

- a. (2022) 0 Supreme (Gau) 710 (Samsun Noor @Samsul Noor vs. State of Assam)

5. In response, learned Additional Public Prosecutor submits that though the petitioners were arrested on 08/11/2023 but charge-sheet was submitted on 03/05/2024 which is within the statutory period of 180 days.

6. I have considered the submissions of the learned counsel for the parties. I have also perused the scanned copy of the trial court record.

7. Admittedly, as per forwarding report all the accused/petitioners were arrested on 08/11/2023 as such the mandatory period for 180 days was over on 06/05/2024. As per charge-sheet, in connection with STF P.S. case No. 17/2023, charge-sheet has been laid on 03/05/2024 u/s 18 (b) (c)/25/29/27 (A) NDPS Act. But the Sessions Judge, Kamrup (M) put his signature on the charge-sheet on 09/05/2024.

8. It transpires that charge sheet was placed before the Sessions Judge, Kamrup (M) on 09/05/2024 which is beyond the mandatory period of 180 days.

9. The Judgment of the Coordinate Bench cited by the learned counsel for the petitioners also held that –

“.....charge sheet before the office of the magistrate/court would not be sufficient compliance in terms with section 173(2) of the code read with rule 38 and 69 of the Assam Police Manual Part IV and it is only when the magistrate/court competent to take cognizance of the offence puts the initials in the charge sheet as well as in the Register maintain with date and seal of the magistrate/court, it would be that date on which the charge sheet has been deemed to have been submitted to the magistrate/court.”

10. As I have already stated that though from the body of the charge-sheet, it is reflected that charge-sheet has been prepared on 03/05/2024, but the learned Sessions Judge, Kamrup (M) put his initial with date on 09/05/2024, which is beyond the mandatory period of 180 days. Hence the petitioners are entitled for default bail.

11. Accordingly, the petitioners, named above, shall be enlarged on bail on furnishing of bail bond of Rs. 1,00,000/- (Rupees One Lac) each with two sureties each of the like amount to the satisfaction of learned Special Judge/Sessions Judge, Kamrup(M), Guwahati, Assam.

12. The direction for bail is further subject to the conditions that the accused-petitioners:

(a) shall not leave the territorial jurisdiction of learned, Special Judge/Sessions Judge, Kamrup(M), Guwahati, Assam without prior written permission from him/her;

(b) 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.

13. In terms of the above, this bail application stands disposed of.

JUDGE

Comparing Assistant