

GAHC010150092024



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

Case No. : Bail Appln./2197/2024

HEKIHO ZHIMO AND ANR
S/O LATE HETOVI ZHIMO, R/O IMCOMLANDING, P.S.-EAST THANA, DIST-
DIMAPUR, STATE- NAGALND

2: KHUKIVI AYE
S/O SUHEVI AYE
R/O BADAMPUKHURI
P.S.-DIPHUPAR
DIST- DIMAPUR
STATE- NAGALAN

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. K BORUAH, MS. P BORAH,MR. M ALAM

Advocate for the Respondent : PP, ASSAM,

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

24/10/2024

Heard Mr. K Boruah, learned counsel for the petitioners and Mr. B Sarma, learned Additional Public Prosecutor, Assam for the State respondent.

2. This application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has been filed by the petitioners, namely, (1) **Hekiho Zhimo**, son of Late Hetovi Zhimo, resident of Imcomlanding, P.S. East Thana, District-Dimapur, Nagaland and (2) **Khukivi Aye**, son of Suhevi Aye, resident of Badampukhuri, P.S. Diphupar, District-Dimapur, Nagaland, seeking bail in connection with **Sessions Case No. 32/2024 arising out of Khatkhati P.S. Case No. 63/2024** under Sections 399/506 IPC read with Section 25 (1-A)/35 of the Arms Act, 1959 corresponding to G.R. No. 117/2024, wherein they were arrested on 10.05.2024 and are in custody since then. Charge under Sections 399/506 IPC read with Sections 25 (1-A)/35 of the Arms Act, 1959 have been framed on 10.07.2024.

3. It is seen from the case record that was called for by order dated 31.07.2024 that out of 9 prosecution witnesses named in the charge-sheet of said Khatkhati P.S. Case No. 63/2024, upto 02.09.2024, evidence of only one seizure witness has been recorded.

4. From the case records, it is also seen that on the basis of a specific information received from reliable source on 09.05.2024 at 03:00 PM that a deal of transaction of huge quantity of suspected narcotic substances would take place at Kairam Basti newly constructed four lane National Highway area in which Khatkhati P.S. G.D. Entry No. 05 dated 09.05.2024 was entered into and on being specially authorized, police personnel from Khatkhati Police Station proceeded to the concerned location after preparing an outlay for such deal of the matter so as to nab the miscreants and to recover the NDPS items. In the evening around 06:00 PM, one Bolero vehicle bearing registration No. NL-07CB-8179 was intercepted and in the meantime, one of the occupants from the said Bolero vehicle took out one pistol but before he could open fire, he was overpowered by police personnel on gunpoint. On checking the said Bolero vehicle and the persons boarded in it, one factory made pistol branded as PIETROBER ETTA GARDONE VI made in Italy bearing No. E451302 along with 3 nos. of magazine loaded with total 43 rounds of live 9MM ammunitions were recovered with 5 persons on board of the Bolero vehicle, namely, (1) Thonga Wangsa, (2) Aloto Chishi, (3) Hekiho Zhimoni, (4) Sri Khukivi and (5) Sattar Ali that includes the petitioners.

5. Case records also reveal that during the investigation, it was found by police that the persons/miscreants involved in the case had not carried any narcotic drugs but they had made preparation to commit dacoity impersonating themselves to be drug sellers carrying the deadly weapons, i.e. pistols and they had come to the place of occurrence with an attempt to commit dacoity.

- 6.** It is seen from the records that out of the two seizure witnesses, evidence of one seizure witness has been recorded and the learned Trial Court is yet to record the evidence of other 8 prosecution witnesses named in the charge-sheet of the case.
- 7.** It was also seen that both the petitioners are from the neighbouring State of Nagaland.
- 8.** Considering such incriminating materials in the case records against the petitioners with regard to their involvement in the alleged crime and considering the period of their detention in custody since 10.05.2024, the Court is of the view that it is not a fit case to grant bail to the petitioners, namely, (1) **Hekiho Zhimo** and (2) **Khukivi Aye**, who are from Nagaland, in the said Sessions Case No. 32/2024 arising out of Khatkhathi P.S. Case No. 63/2024 at this stage, as the trial of the case has just begun and only evidence of one of the prosecution witnesses has been recorded.
- 9.** Accordingly, this bail application of the petitioners, named above, in said Sessions Case No. 32/2024 arising out of Khatkhathi P.S. Case No. 63/2024 stands rejected.

JUDGE

Comparing Assistant