

GAHC010170302024



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

Case No. : AB/2229/2024

JEHERUL ISLAM KHAN @ JEHERUL ISLAM AND ANR
S/O LT. KHALEQUEZZAMAN KHAN
R/O KALJHAR, P.O. KALJHAR
P.S. HOWLY,
DIST. BARPETA, ASSAM
C.NO. 9957405425 (M/WHATS APP)

2: NAIMUDDIN
REPRESENTED BY THE PP
ASSA

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : K U AHMED,

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 15.10.2024

1. Heard Mr. K. U. Ahmed, learned counsel for the petitioners. Also heard Ms. A. Begum, learned Additional Public Prosecutor for the State respondent.

2. This application under Section 482 of BNSS, 2023 has been filed by the petitioners, namely, (1) Jeherul Islam Khan @ Jeherul Islam and (2) Naimuddin who are apprehending their arrest in connection with Patacharkuchi P.S. Case No. 149/2024 registered under Section 21 (b) of the NDPS Act.

3. The gist of the accusation in this case is that on 20.07.2024 on Bikashjyoti Deka had lodged an FIR before the Officer-in-Charge of Patacharkuchi Police Station in Bajali alleging that on receipt of an information through reliable sources, a search operation was conducted near Galia Toll Plaza and one Shahidul Islam was apprehended therefrom and on search of the said person, 22 grams of suspected heroin was recovered from possession of the said Shahidul Islam.

4. It is also stated in the FIR that during interrogation the apprehended accused stated that the present petitioners were also involved in the offence alleged in the FIR.

5. Learned counsel for the petitioners has submitted that the petitioners have been falsely implicated in the FIR and nothing was recovered from their possession.

6. Learned counsel for the petitioners has submitted that the statement of a co-accused in NDPS cases regarding recovery in NDPS cases is not admissible as held by the Apex Court in the case of "**Tofan Singh Vs. State of Tamil Nadu**" reported in **(2021) 4 SCC 1**.

7. It is also submitted by the learned counsel for the petitioners that the petitioners are ready to cooperate in the investigation.

8. On the other hand, learned Additional Public Prosecutor has opposed the grant of bail to the present petitioners on the ground that they have been implicated by the co-accused from whose possession the contraband was

recovered.

9. It is also submitted by the learned Additional Public Prosecutor that as the investigation is in early stage, there is a possibility of collection of evidence against the present petitioners.

10. I have considered the submissions made by the learned counsel for both the sides and have gone through materials on record including the case diary of Patacharkuchi P.S. Case No. 149/2024.

11. On perusal of the materials on record, it appears that nothing has been recovered from the possession of the present petitioners and the accused from whose possession the contraband has been recovered has already been arrested.

12. It also appears that the only materials against the present petitioners in the case diary is the statement of the co-accused which in view of the judgment of the Apex Court in the case of "**Tofan Singh Vs. State of Tamil Nadu**" (**Supra**) is not admissible against the present petitioners.

13. In view of above, this anticipatory bail application is disposed of with a direction to both the petitioners to appear before the Investigating Officer of Patacharkuchi P.S. Case No. 149/2024 within a period of 7 days from the date of this order and cooperate in the investigation. If they do so within the stipulated period of time, in the event of their arrest in connection with the Patacharkuchi P.S. Case No. 149/2024, they shall be allowed to go on bail of up to Rs. 30,000/- (Rupees Thirty Thousand Only) each with one surety of like amount to the satisfaction of the arresting authority subject to the following conditions:

- i.** That the petitioners shall co-operate in the investigation.
- ii.** That the petitioners shall not directly or indirectly make any inducement, threat or promise to any person who may be acquainted

with the facts of the case, so as to dissuade such person from disclosing such facts of the case before the Investigating Officer.

- 14.** Send back the case diary.
- 15.** This anticipatory bail application is accordingly, disposed of.

JUDGE

Comparing Assistant