

GAHC010192512024



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

Case No. : Bail Appln./2801/2024

BALIRAM RABHA AND 2 ORS
S/O- LATE NAREN CHANDRA RABHA,
R/O- VILLAGE MANIKPUR,
P.S- PALASHBARI, DIST- KAMRUP, ASSAM

2: PHUSURI RABHA
W/O- NIRAKTA RABHA
R/O- VILLAGE MUDUKI
P.S- PALASHBARI
DIST- KAMRUP
ASSAM

3: SABERI RABHA
W/O- KALU RABHA
R/O- VILLAGE MUDUKI
P.S- PALASHBARI
DIST- KAMRUP
ASSA

VERSUS

THE STATE OF ASSAM
REP BY THE PP ASSAM

Advocate for the Petitioner : , D R TALUKDAR,MR. B R DAS,MS TINLUNG,MR. DITUL DAS,MR. K MEDHI,MR A TALUKDAR

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 15.10.2024

- 1.** Heard Mr. D. Das, learned counsel for the petitioners. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State.
- 2.** This application under section 483 of BNSS, 2023 has been filed by the petitioners, namely, *1. Baliram Rabha, 2. Phusuri Rabha and 3. Saberi Rabha* who were apprehended on 07.08.2024 in connection with Palashbari P.S. Case No. 274/2024 under Sections 20(b)(ii)(C)/ 29 of NDPS Act, 1985.
- 3.** The gist of accusation in this case is that on 07.08.2024 one Rikhab Borah, SI of Police had lodged an FIR before the Officer-in-Charge of Palashbari Police Station, *inter alia*, alleging that on 07.08.2024 at about 5.30 AM, an information was received by the Officer-in-Charge of Palashbari Police Station that some persons were transporting some drugs from Garilick side to Palashbari. On receipt of the said information, a naka checking was arranged and a vehicle (tempo) bearing Registration No. AS-25-CC-1887 was intercepted with the accused persons inside the said vehicle and on search of the vehicle, 31 Kgs. of Ganja was recovered from the said vehicle.
- 4.** The learned counsel for the petitioners has submitted that the petitioners were the passengers in the said vehicle and the vehicle was a passenger vehicle and they were unaware of the contraband being carried in the said vehicle. It is also submitted by the learned counsel for the petitioners that the petitioners were not in conscious possession of the recovered contraband as the same was recovered from the back seat of the vehicle which was a passenger vehicle.

5. The learned counsel for the petitioners has also submitted that the petitioner No. 3, who is a woman, had lost her husband while she was in custody. In support of his submissions, he has submitted the death certificate of the husband of the petitioner No. 3 issued by the Gaonburah.

6. On the other hand, learned Additional Public Prosecutor has submitted that the contraband recovered in this case is a of commercial quantity and, hence, embargo of Section 37 of the NDPS Act, 1985 would be applicable in this case. He submits that the contraband was recovered from the conscious possession of the present petitioners who were the only passengers in the vehicle from which the recovery of the contraband was made. He has vehemently opposed the grant of bail to the present petitioners and has also produced the case diary of Palashbari P.S. Case No. 274/2024.

7. I have considered the submissions made by the learned counsel for both the side and have perused the case diary of Palashbari P.S. Case No. 274/2024 which has been produced by the Investigating Officer in this case.

8. The quantify of contraband recovered in this case is of commercial quantity, hence, embargo of Section 37 of the NDPS Act is applicable in this case. The material available on record shows that the contraband was recovered from an auto rickshaw in which the petitioners were travelling.

9. On perusal of the seizure list as well as photographs of seizure procedure available in the case diary, at this stage of investigation, it appears that there are sufficient incriminating materials against all the above named petitioners. There is nothing on record to suggest that the seized contraband was not recovered from the conscious possessions of the present petitioners.

Hence, due to embargo of Section 37 of the NDPS Act, the prayer for bail is rejected at this stage.

10. Send back the case diary.

JUDGE

Comparing Assistant