

GAHC010213552024



2024:GAU-AS:11869

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

Case No. : Bail Appln./3145/2024

MIJANUR RAHMAN AND ANR
S/O FAZAL RAHMAN, R/O GORAIMARI, P.S.-PANBARI, DIST-CHIRANG
(ASSAM)

2: NOBIR HUSSAIN
S/O FAZAL RAHMAN
R/O GORAIMARI
P.S.-PANBARI
DIST-CHIRANG (ASSAM)

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY, B BARMAN, MR. H ALI, MR. I A HAZARIKA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

29-11-2024

Heard Mr. HRA Choudhury, learned Senior Counsel, assisted by Mr. H. Ali learned counsel for the petitioners and Mr. B. Sarma, learned Additional Public Prosecutor, Assam for the State.

2. The petitioners, namely, **(i) Mijanur Rahman** and **(ii) Nobir Hussain**, both sons of Fazal Rahman, resident of Goraimari, under Panbari Police Station of District-Chirang have filed this application under Section 483 BNSS, 2023 praying for their release on bail in **Panbari Police Station Case No. 55/2024** under Section 180 BNS read with Sections 21(C)/29 of the NDPS Act, 1985, in which they were arrested on 19-08-2024 and are in custody since then.

3. As per the FIR dated 19.08.2024 the case is that on receipt of specific information in the early morning of 19.08.2024 that the petitioners have kept suspected heroin and fake Indian currency in their house located at Goraimari village under Panbari Police Station which was accordingly entered into the General Diary Vide No. 430 dated 19.08.2024 in the said police station. Following the same police personnel from Panbari Police Station with due authorization along with personnel from 7th Assam Police Battalion as well as personnel from 15th Battalion of SSB, camped at Bishnupur under Panbari Police Station reached the House of the petitioners at around 05:30 in the morning of 19.08.2024. During their house search, in presence of independent witnesses, both the petitioners were found in their residence. During such house search, in presence of independent witnesses –(i) 119 Nos. of small plastic vials containing suspected heroin, total weighing 230 grams with the containers of; (ii) 46 grams of suspected heroin in a plastic packet; (iii) 44 grams of suspected heroine in another plastic packet; (iv) 44 grams of suspected heroine in one more plastic packet, altogether 364 grams of suspected heroin; (v) 5 pairs of plastic soap cases; (vi) 66 Pcs of fake Indian currency notes of Rs. 500/- denomination, totalling Rs.33,000/-; (vii) 75 Pcs. of fake Indian currency notes of Rs. 200/- denomination, totalling Rs.15,000/-; (viii) 280 Pcs. of fake Indian currency notes of Rs.100/- denomination, totalling Rs. 28,000/-; along with other items, like – yellowish powder weighing 1 Kg, Infinix mobile handset, Mahindra Bolero vehicle were recovered. The recovered items were packed and sealed in due process that were accordingly seized in presence of witnesses and all the police personnel returned to the police station along with the seized items with both the petitioners. Thereafter the FIR was lodged and the petitioners have been taken into custody.

4. Accordingly, Panbari Police Station Case No. 55/202 under Section 180 BNS read with Section 21(C)/29 of the NDPS Act, 1985, was registered in which petitioners were arrested and in custody.

5. Mr. HRA Choudhury, learned Senior Counsel appearing for the petitioners stated that the prosecution neither in the FIR nor in the forwarding, mentioned about the actual quantity of suspected heroin without the vial or the container, except for stating that there were 119 numbers of small plastic vials containing suspected heroin weighing about 230 grams. Mr. Choudhury, learned Senior Counsel also stated that 46 grams, 44 grams and 44 grams of suspected heroine found in 3 different plastic packets together makes 134 grams. If 230 grams of suspected heroine found in 119 numbers of small plastic vials are added with said 134 grams of suspected heroine found in three different plastic packets, altogether it becomes 364 grams of suspected heroin. Though 250 grams of Heroin is the commercial quantity, but in the present case, if the weight of 119 numbers of plastic vials as well as the weight of 3 plastic packets from which suspected heroin were allegedly found from the petitioners are subtracted and/or removed from the total of 364 grams of suspected heroine recovered, it will be much less than 250 grams of suspected heroin allegedly recovered from the petitioners, which will be of intermediary quantity, Mr. Choudhury, learned Senior Counsel therefore, submitted that in such circumstances, the petitioners are entitled for their bail considering their detention since 19-08-2024.

6. It is also submitted by Mr. HRA Choudhury, learned Senior Counsel appearing for the petitioners that chargesheet in the case has not yet been filed and the petitioners have been in custody for about 102 days.

7. Mr. Choudhury, learned Senior Counsel submitted that the petitioners shall abide by any terms and conditions that may be imposed upon them while considering their bail in the present case.

8. Mr. B. Sarma, learned Additional Public Prosecutor for the State from the case diary submitted that there is no indication of the weight of the empty 119 plastic vials that

contained 230 grams of suspected Heroin nor that of the empty 3 plastic packets that contained 46 grams, 44 grams and 44 grams of suspected heroin recovered from the petitioners. At the same time Mr. Sarma submitted that large numbers of fake Indian currency notes of denominations of Rs.500/-, Rs. 200/- and Rs.100/- have been recovered from the petitioners. As such Mr. Sarma vehemently objected to granting bail to the petitioners. However, on being enquired, Mr. Sarma submitted that FSL Reports are yet to be received.

9. In the present case it is seen that the respondent State did not disclose the weight of suspected Heroin rather it has given the total weight of suspected Heroine in 119 plastic vials as 230 grams. Similarly the state also did not disclose the weight of the suspected Heroin found in three plastic packets and gave the weights of the suspected heroin along with the plastic packets that where and lastly recovered from the petitioners.

10. it is seen that FSL reports relating to recovered suspected Heroin as well as fake Indian currency notes are yet to be received.

11. Considering the above and the period of their detention in custody since 19-08-2024 the court is of the opinion that their further custodial detention is not warranted to investigated the said Panbari P S case. As such, the petitioners, named above, are entitled for their bail in said **Panbari Police Station Case No. 55/2024**, if not required in any other case pending against them.

12. Accordingly, the petitioners, namely, **(i) Mijanur Rahman** and **(ii) Nobir Hussain**, both sons of Fazal Rahman, be released on bail in said **Panbari Police Station Case No. 55/2024** on furnishing a bail bond of Rs.50,000/- by each of the petitioners, with two local sureties each of the like amount, to the satisfaction of the learned Special Judge (NDPS), Chirang at Bijni on conditions that the petitioners —

- (i)** shall appear before the Investigating authority of the Panbari Police Station Case No. 55/2024 as and when they are required for necessary investigation of the case;
- (ii)** shall not leave the territorial jurisdiction of Panbari Police Station without

obtaining prior written permission from the Investigating authority of said Panbari Police Station Case No. 55/2024;

- (iii) shall not hamper or tamper with the evidence of the case;
- (iv) 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 them from disclosing such facts to the Court;
- (v) shall not involve himself in any criminal activities;
- (vi) shall surrender their respective Passport, if any, before the Investigating authority of said Panbari Police Station Case No. 55/2024 on or before 05-12.2024, obtaining necessary acknowledgement in that regard.

13. Any violation of the aforesaid terms and conditions by the petitioners, namely, **(i) Mijanur Rahman** and **(ii) Nobir Hussain**, the bail granted to them in said **Panbari Police Station Case No. 55/2024** shall stand automatically vacated.

14. With the above observations and directions, this bail application accordingly stands disposed of.

15. Return the case diary herewith.

JUDGE

Comparing Assistant