

GAHC010223212024



2024:GAU-AS:11064

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

Case No. : Bail Appln./3277/2024

MD NUR HUSSAIN
S/O MD. HABIBUR RAHMAN
R/O VILL- BIDYAPUR
P.S. URIAMGHAT
DIST. GOLAGHAT, ASSAM
PIN- 785601

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. R C DAS, MR S HUSSAIN, MR. H RAHMAN

Advocate for the Respondent : PP, ASSAM,

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

12-11-2024

- 1)** Heard Mr. R. C. Das, learned counsel for the petitioner and Mr. B. Sarma, learned Additional Public Prosecutor, Assam for the State.
- 2)** Petitioner **Md. Nur Hussain**, son of Md. Habibur Rahman, resident of Village-

Bidyapur, Police Station-Uriamghat, District-Golaghat has filed this application under Section 483 BNSS 2023 praying for his bail in Uriamghat Police Station Case No. 18/2024 under Sections 21(C) & 29 of the NDPS Act, corresponding to GR No. 64/2024, in which he was arrested on 06.08.2024 and in custody since then.

3) As per the FIR dated 23.06.2024 lodged by the complainant before the Officer-in-Charge of Uriamghat Police Station, the case is that on the intervening night of 22.06.2024 and 23.06.2024 around 01:10 AM, an information from a reliable source was received that one Md. Saha Ali resident of Bidyapur, under Uriamghat Police Station, District-Golaghat concealed huge quantity of NDPS items in the House of one Mrs. Rahima Khatoon, wife of Late Abdul Jalil, resident of No.3 Doyalpur, also under Uriamghat Police Station and that both of them were running an unholy nexus since long time. Said information was accordingly entered in to the General Diary of Uriamghat Police Station vide Entry No. 04 dated 23.06.2024 and the concerned Sub-Divisional Police Officer of Dhansiri was informed. Said SDPO, Dhansiri along with the Sub-Inspector of Police of Dhansiri Police Station and the Officer-in-Charge of Chungajan Police Station arrived at Uriamghat Police Station around 02:00 am. On receipt of authorisation, the said informant/complainant along with those police personnel, with all the required materials, proceeded to the concerned location and reached the said place early in the morning of 23.06.2024 around 04:05 am and surrounded the House of said Mrs Rahima Khatoon. At about 06:01 am in presence of local public and VDP members they visited the house of said Mrs. Rahima Khatoon and she along with Md. Saha Ali came out from her house. During search of her house in presence of those independent witnesses and police personnel, from her kitchen three polythene bags with (i) 5 soap boxes (ii) 10 soap boxes and (iii) 9 soap boxes, respectively, in total 24 soap boxes were recovered from which 269.94 grams of Heroin were retrieved, which were accordingly seized. From the said place of occurrence all those police personnel returned to Uriamghat Police Station along with those two apprehended persons, namely, Md. Saha Ali and Mrs. Rahima Khatoon. During interrogation of the two apprehended accused persons, it came to the light that Md. Saha Ali is the son-in-law of said Mrs Rahima Khatoon. It was Akbar Ali, son of late

Hashmat Ali, father of said Md. Saha Ali who brought those Heroin from Dimapur and through his son Md. Saha Ali sent it to the house of said Mrs. Rahima Khatoon to keep those Heroin concealed in her House. Said Md. Saha Ali while keeping the Heroin in the house of his mother-in-law stayed at her house for the night and it was Mrs. Rahima Khatoon, was to carry those Heroin to Nagaon on the next morning. During investigation it was revealed by the arrested accused persons of the case that Akbar Ali, father of the arrested accused Md. Saha Ali and the petitioner together frequently travelled to Nagaland and they used to bring huge amount of Heroin to Uriamghat and then through those arrested, Md. Saha Ali and Mrs. Rahima Khatoon, they use to transport those to various places in Golaghat and Nagaon Districts. It was also revealed that for the last three years all those were involved in the smuggling of NDPS items. By the said FIR the informant requested the concerned police authorities to register the case and to do the needful accordingly.

4) Said FIR of the complainant was registered on 23.06.2024 itself as Uriamghat PS Case No. 18/2024 under Sections 21(C)/29 of the NDPS Act.

5) Petitioner stated that he was arrested on 06.08.2024 purely on suspicion as one of the arrested accused persons named him before police during investigation of the case which can be seen from the forwarding report of his forwarding to the Court of learned Special Judge (NDPS), Golaghat dated 07.08.2024. According to the petitioner he married the daughter of Akbar Ali, father of the arrested accused Md. Saha Ali and since last two years there has been a dispute between him and his wife and that a proceeding under section 498A IPC is pending against him. Taking this opportunity, the petitioner is being falsely implicated in the case involving him in the accusation.

6) Relying on a decision of the Hon'ble Supreme Court in the case of *Tofan Singh -Vs- State of Tamil Nadu* reported in (2021) 4 SCC 1, Mr. Das learned Counsel for the petitioner submitted that the confessional statement of the arrested accused persons of the case, made before the investigating officer of the case, a police officer, cannot be taken into account in order to convict the petitioner and therefore, he is entitled for his

release on bail in the case.

7) According to the petitioner he has been arrested about two months after the incident and that he is in custody for more than three months. As he is not involved in the case he should be released on bail and that he shall comply with all the conditions that may be imposed upon him by the Court.

8) Perused the case diary of the case placed by Mr. B. Sarma, learned Additional Public Prosecutor for the State that was called for by the Court by order dated 28.10.2024.

9) From the case diary it is seen that the 269.94 grams of NDPS item recovered from the kitchen of the arrested accused Mrs. Rahima Khatoon, gave positive result as Heroin on being tested by police at the site itself by its NDPS Kit. Though sample of seized NDPS substance has been sent to the FSL for its necessary examination, but the FSL report is awaited.

10) It is also seen from the case diary that Akbar Ali, son of late Hashmat Ali, i.e., father of the arrested accused Md. Saha Ali, with whom the petitioner was allegedly involved in procuring NDPS items from Nagaland and were transporting and selling it through the other two arrested accused persons of the case, namely, Md. Saha Ali and Mrs. Rahima Khatoon, at various places of Golaghat and Nagaon districts since long, is yet to be apprehended in the case as he is evading arrest.

11) Moreover, the Investigating Officer of the case indicated that if at this stage of the investigation, the petitioner is released on bail, when one of the main accused of the case Akbar Ali is yet to be arrested, there is a high probability that he will influence the witnesses and that there shall be a perception of threat and that entire investigation and prosecution will be disrupted.

12) Case diary reflects sufficient incriminating materials regarding involvement of the petitioner in the alleged crime. After considering the entire aspect of the matter this Court is of the opinion that the custody of the petitioner since 06.08.2024 cannot be taken into

account for his bail in said Uriamghat PS Case No. 18/2024.

13) Accordingly, this bail application of the petitioner, **Md. Nur Hussain**, for his bail in said **Uriamghat PS Case No. 18/2024** under Sections 21(C)/29 of the NDPS Act, corresponding to GR No. 64/2024, stands **rejected**.

14) Return the case diary herewith.

JUDGE

Comparing Assistant