

GAHC010224922024



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

Case No. : Bail Appln./3276/2024

JAHAR ALI AND 2 OTHERS
S/O- USMAN ALI,
VILLAGE- PASHUARKHAL PART III,
P.S- BILASIPARA, DIST- DHUBRI, ASSAM

2: HANIF ALI
S/O- ABDUL MOZID SK
VILLAGE- JOYBHUM
P.S- LAKHIPUR
DIST-GOALPARA
ASSAM

3: ABUL KALAM
S/O- AMZAD ALI
VILLAGE- JOYPUR
(ROWMARI)
P.S- BAGUAN
DIST-GOALPARA ASSA

VERSUS

THE STATE OF ASSAM
REP BY PP ASSAM

Advocate for the Petitioner : MR R A AHMED, MR. N J DUTTA, MR M AHMED, MRS R BEGUM

Advocate for the Respondent : PP, ASSAM,

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

07/11/2024

Heard Mr. N J Dutta, learned counsel for the petitioners and Mr. K K Parashar, 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) Jahar Ali, (2) Hanif Ali** and **(3) Abul Kalam**, seeking bail in **Goalpara P.S. Case No. 139/2024** registered under Sections 303(2)/318(4)/336(3)/3(5) of BNS read with Section 23 of Petroleum Act corresponding to G.R. No. 997/2024, wherein they were arrested on 19.10.2024 and are in custody since then.

3. As per the FIR dated 18.10.2024, the case is that on 17.10.2024 around 7:30 PM, during Naka checking in front of Naranarayan Setu Police Post, an Ultra T-7 Truck bearing registration No. AS-28-C-9878 was found to be loaded with 21 nos. of drums suspected to be of petroleum products and accordingly, apprehended the petitioner No. 2, who happens to be the owner of the said Ultra T-7 Truck and the petitioner No. 3, who happens to be the driver of the said truck. On their spot interrogation, the petitioner No. 2 and the petitioner No. 3 informed that the petitioner No. 1 sent those petroleum products through them that were collected by him from an unknown place and those petroleum products were sent to the house of another accused person of Goalpara District under Lakhipur Police Station for sale. Accordingly, said FIR was registered as Goalpara P.S. Case No. 139/2024 under Sections 303(2)/318(4)/336(3)/3(5) of BNS. On the basis of such information of the petitioner Nos. 2 and 3, the petitioner No. 1 was taken into custody.

4. During investigation, police seized those 21 nos. of drums suspected to be of petroleum products from the said Ultra T-7 Truck and also the said Truck.

5. As the petitioners are in custody since 19.10.2024, they have prayed for their release on bail.

6. On behalf of the petitioner No. 1, Mr. Dutta, learned counsel for the petitioners submitted that through proper tax invoices, he procured such petroleum product that is industrial solvent oil from Sikkim Organics, Sikkim on 16.10.2024 and it was sent to Oil Chemical Industries at

Guwahati on 17.10.2024.

7. It is also stated that the petitioner No. 1 is in the business of such petroleum products, particularly industrial solvent oil having valid licence. He has his own store, namely, Oil Chemical Store at Bilasipara, Village-Pasurakhal, P.S. Bilasipara, District-Dhubri.

8. Mr. Dutta, learned counsel for the petitioners placed the provisions of Sections 2(a), (b), (bb), (bbb) and (c) of the Petroleum Act, 1934 as well as the provisions of Rule 3 of the Petroleum Rules, 2002 that stipulate the restriction on delivery and dispatch of petroleum, wherein at Rule 3 (3) provides that – *petroleum Class-B not exceeding 15,000 litres in quantity packed in sealed airtight approved containers may be dispatched to a person not holding a storage licence provided that the person dispatching the petroleum has satisfied himself that prior arrangements have been made by the person to whom the petroleum is dispatched for the immediate disposal in the original sealed packages or such quantity as in excess of 2,500 litres, provided that – a dry chemical powder fire extinguisher as a means of fighting fire in emergency shall be carried in the case of the containers with more than 2,500/- litres.*

9. Mr. Dutta, learned counsel for the petitioners also relied on a judgment of this Court in the case of *Kailash Kumar Agarwala Vs. State of Assam* reported in (2004) 2 GLT 347, wherein Sections 23(1)(a) of the Petroleum Act, 1934 has been considered to be a bailable offence.

10. Perused the case diary placed before the Court today by Mr. Parashar, learned Additional Public Prosecutor, Assam.

11. On perusal of the case diary, it is seen that though police have seized 21 nos. of drums of suspected petroleum products on 17.10.2024, but it does not specify the quantity of such suspected petroleum products that have been seized. Moreover, there is no such report that such products in 21 nos. of drums seized from the said Ultra T-7 Truck on 17.10.2024 are actually petroleum products or not.

12. Case diary also does not indicate whether the tax invoice, e-Way Bill and the GST receipt placed by the petitioner No. 1 before police are genuine or forged. However, it is seen that one of the co-accused, who is involved in the illegal business of petroleum products as has been clarified by the co-accused is yet to be apprehended in the case, who is evading police.

13. Considering the materials available in the case diary and the period of detention of the petitioners, named above, in custody since 19.10.2024, this Court is of the view that their further custodial detention is not warranted to investigate the said Goalpara P.S. Case No. 139/2024. As such, this bail application of the petitioners in said Goalpara P.S. Case is accepted.

14. Accordingly, the petitioners, namely, **(1) Jahar Ali, (2) Hanif Ali and (3) Abul Kalam**, be released on bail in said **Goalpara P.S. Case No. 139/2024** registered under Sections 303(2)/318(4)/336(3)/3(5) of BNS read with Section 23 of Petroleum Act corresponding to G.R. No. 997/2024, on furnishing a bail bond of Rs.50,000/- each, with 2 (two) local sureties each of the like amount, one of which shall be a Government employee, either State or Central Government, to the satisfaction of the learned Chief Judicial Magistrate, Goalpara, on conditions that the petitioners – **(i)** shall appear before the Investigating Officer of said Goalpara P.S. Case No. 139/2024 on or before 12.11.2024 and thereafter, as and when they are required for necessary investigation of the case; **(ii)** shall not leave the territorial jurisdiction of the Goalpara Police Station, without obtaining prior written permission from the concerned Investigating Officer of the case; **(iii)** shall not hamper with the investigation, 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 or to any police officer and **(v)** shall not involve themselves in any criminal activities and further shall not indulge with such act again, failing which, the bail granted to them in the aforesaid Goalpara P.S. Case No. 139/2024 shall stand automatically vacated.

15. Bail application accordingly stands allowed to the extent above.

16. Return the case diary.

JUDGE

Comparing Assistant