

GAHC010252712024



2024:GAU-AS:12440

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

**Case No. : Bail Appln./3630/2024**

JEHERUL ALI  
S/O LT. KHASFUL ALI  
R/O UTHIMARI ATHARA  
P.S. RANGIA  
DIST. KAMRUP (R), ASSAM

VERSUS

THE STATE OF ASSAM  
REP BY THE PP, ASSAM

**Advocate for the Petitioner** : DR. D J DEKA, MR KUTUB ALI

**Advocate for the Respondent** : PP, ASSAM,

**BEFORE**  
**HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

**ORDER**

**09-12-2024**

Heard Dr. D J Deka, learned counsel for the petitioner and Mr. B Sarma, learned Additional Public Prosecutor, Assam for the State.

**2.** The petitioner, namely, **Jeherul Ali**, son of Late Khasful Ali, resident of Village-Puthimari Athara, Police Station-Rangia, District-Kamrup has filed this application under Section 483 BNSS, 2023 praying for his release on bail in Chandmari Police Station Case No. 282/2024 under

Sections 303(2)/112(2)/3(5) BNS, 2023, read with added Sections 317(2)/238(C) BNS, 2023 corresponding to G.R. No. 6828/2024, in which he was arrested on 20.11.2024 and is in custody since then.

**3.** It is submitted on behalf of the petitioner that he is no way connected with the case and has been falsely implicated in it. It is stated that the petitioner was an employee of a Company of which accused Anil Goenka is the Manager whereas another accused Amrit Kumar Siddha is the CMD of the said Company. Petitioner left the job of the said Company and while he visited his friend Azad Ali (petitioner No.1 of BA No. 3706/2024) to collect his last month's salary, he was apprehended by police in said Chandmari P.S. Case No. 282/2024 along with said Azad Ali.

**4.** The petitioner stated that he is innocent and that he did not have any criminal past record and that he is the only earning member of his family having his wife and minor children. It is submitted that the petitioner shall co-operate with the investigation of the case and that he will abide by any terms and conditions that may be imposed upon him by the Court while considering his case for releasing him on bail.

**5.** It is submitted by the petitioner that arrested co-accused of the case have already been released on bail by the Court of learned Additional Sessions Judge, Kamrup (Metro), Guwahati. Considering his detention since 20.11.2024 and as co-accused of the case have already been released on bail, the petitioner, therefore, has prayed for his release on bail in said Chandmari P.S. Case No. 282/2024.

**6.** Mr. B Sarma, learned Additional Public Prosecutor for the State submitted that the accused persons involved in the case have been charged with the theft of manhole covers, a crime that directly endangers public safety by leaving those manholes open, risking severe accidents or fatalities. Such crime also disrupts essential public infrastructure, demonstrating its anti-social nature and the significant harm caused to the public.

**7.** With regard to the petitioner, Mr. Sarma, learned Addl. Public Prosecutor from the Case diary submitted that the petitioner is a scrap dealer and middleman, acted as intermediaries, who knowingly received the stolen manhole covers from the initial thieves and transported them to the handlers, displaying clear intent to support the organised operation of theft of manhole covers, involved in the case. Mr. Sarma submitted that considering the gravity of the offences, bail should not be granted to the petitioner as investigation is going on and if granted, it would

undermine the public confidence in the justice system. Therefore, Mr. Sarma prayed for rejection of the bail of the petitioner considering his involvement in the case on the basis of the materials available in the case diary.

**8.** As per the FIR dated 18.11.2024, the case is that over the past few days a series of thefts involving manhole covers in the Bamunimaidan area were noticed. It was reported that a group of miscreants had been stealing the manhole covers using small commercial vehicle to transport them and selling those outside Guwahati. The accused persons have allegedly been engaging in such activities for extended period. After receiving such reports, the matter was informed to the Officer-in-charge of Chandmari Police Station who in turn notified the matter to the senior Police Officials as per the procedure. Accordingly, a team was subsequently formed consisting of police personnel from Chandmari Police Station to investigate the matter. For the last few days patrolling was intensified in Chandmari area. On 18.11.2024 in the morning hours around 06:00 am, based on credible suspicion, the said police team successfully apprehended the gang members, five stolen numbers of manhole covers were recovered along with a four-wheeler commercial vehicle (Tata Yodha) bearing Registration No. AS-01-QC-0265. Exploiting the ongoing drainage repair and the cleaning work, during which manhole covers were left beside the footpaths, the accused persons posed as Guwahati Municipal workers to avoid suspicion and had stolen those manhole covers, during which six of the accused persons were apprehended who loaded the stolen manhole covers into the vehicle and attempted to flee. During the preliminary enquiry it was revealed that the vehicle belongs to one Chinmoy Chakraborty and was also discovered that the apprehended accused persons had been selling the stolen manhole covers to scrap yards in Rangia and furthermore, a middleman posing as a GMC official was found assisting the apprehended accused persons in executing the theft of manhole covers and that the stolen articles have been duly seized preparing the seizure memo and the accused persons were duly apprehended by police personnel. As such the complainant lodged the FIR before the Officer-in-Charge of Chandmari Police Station requesting the said authority to initiate legal action against the apprehended individuals, the alleged GMC official, the scrap yard owners involved in the case who received the stolen goods and to register a case under the appropriate sections of law and for necessary investigation of the case. Accordingly, Chandmari Police Station Case No. 282/2024 under Sections 303(2)/112(2)/3(5) BNS, 2023 was registered read with added Sections 317(2)/238(C) BNS, 2023.

**9.** From the forwarding report of the petitioner dated 20.11.2024 annexed to this petition as Annexure-III, it is seen that on the basis of confessional statements of the remanded accused persons of the case and during investigation process of said Chandmari P.S. Case No. 282/2024 as evidences have been found against them, the accused persons of the case, including the petitioner, have been apprehended from different places of Guwahati and Rangia in said Chandramani P.S. Case and after their arrest, the present petitioner along with other arrested accused persons of the case were accordingly produced before the Magistrate on 20.11.2024.

**10.** During the deliberation of the matter Dr. Deka, learned counsel for the petitioner submitted that police before arresting the petitioner did not serve him with the Notice under Section 35(3) of the BNSS as required under the law, which is mandatory in nature and thereby committed illegality, for which the petitioner is entitled for bail.

**11.** Mr. B Sarma, learned Addl. P.P., Assam on the other hand objected the said submission of Dr.Deka, learned counsel for the petitioner, stating that the petitioner along with others were apprehended from different places in Guwahati and Rangia based on the confessional statements of the remanded accused persons of the case and on the basis of evidences found against them during the process of investigation of the case. Mr. Sarma, learned Addl. P.P., Assam stated that following the due process the petitioner was apprehended during investigation process of the case as per the provisions of Sections 35(1)(b)(i) and 35(1)(b)(ii) of the BNSS and therefore, notice under Section 35(3) of the BNSS need not be served upon the petitioner. In that regard Mr. Sarma has placed the forwarding report dated 20.11.2024 of the petitioner, annexed to do this petition as Annexure-III. Mr. Sarma has also placed the relevant case diary in that regard.

**12.** Perused the case diary placed by Mr. Sarma, learned Addl. P.P., Assam. From the Case diary it is seen that Inspection Memo duly signed by the petitioner as apprehender; Memo of Arrest under Section 35 of the BNSS, duly served upon the petitioner with his signature on it; Notice under Section 47 BNSS, duly served upon the petitioner with his signature on it; as well as Notice under Section 48 BNSS served upon the petitioner, with the signature of the petitioner on those, all dated 20.11.2024 have been found on the said record.

**13.** From the case diary it is also seen that on their production on 20.11. 2024, the learned Judicial Magistrate First Class, Kamrup (M), Guwahati in said Chandmari P.S. Case No. 282/2024, on perusal of the records, found the grounds of arrest of the petitioner as justified and done in

accordance with the provisions of Sections 35(1)(b)(i) and 35(1)(b)(ii) of the BNSS and the mandate of the Hon'ble Supreme Court in the cases of *Arnesh Kumar Vs. State of Bihar*, reported in (2014) 8 SCC 273, *Satender Kr. Antil Vs. CBI*, reported in (2022) 10 SCC 51, *Mohd. Muslim @ Hussain Vs. State*, reported in 2023 INSC 311 and *Prabir Purkayastha Vs. State*, reported in 2024 0 INSC 414.

**14.** On perusal of the case diary sufficient incriminating materials have been found against the petitioner with his involvement in the alleged crime.

**15.** The case diary indicates that the theft of manhole covers was not an isolated incident but part of a premeditated and systematic criminal operation involving impersonation, coordination with intermediaries and collaboration with scrap yards to process stolen property. The actions of the accused persons involved in the case indicate a well-planned and an organised criminal network and that the accused persons are closely tied to a larger network of criminals, intermediaries and scrap the operators. It is also seen that investigation is yet to be completed.

**16.** Considering the entire aspects of the matter, noted above, this Court is of the opinion that detention of the petitioners since 20.11.2024 cannot be considered for his bail in said Chandmari P.S. Case No. 282/2024.

**17.** Accordingly, this bail application of the petitioner, **Jeherul Ali**, son of Late Khasful Ali, in said Chandmari Police Station Case No. 282/2024 stands rejected.

**18.** Return the Case diary here with.

**JUDGE**

**Comparing Assistant**