

GAHC010264862023



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

Case No. : AB/3983/2023

DILWAR HUSSAIN @ DILWORE HUSSAIN @ KUTI AND ANR
S/O LATE MATHOLOBUR RAHMAN
R/O BOROF-KOL DIGIRPAR
P.S. BADARPUR
DIST. KARIMGANJ, ASSAM

2: GULZAR HUSSAIN @ PHETU
S/O LATE MATHLOBUR RAHMAN
R/O BOROF-KOL
DIGIRPAR
P.S. BADARPUR
DIST. KARIMGANJ
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. P P BARUAH
Advocate for the Respondent : PP, ASSAM

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

O R D E R

23.01.2024

Heard Mr. P.P. Baruah, learned counsel appearing for the petitioners and Mr. M.P. Goswami, learned Additional Public Prosecutor, appearing for the State.

2. By this application under Section 438 Cr.P.C, the petitioners, namely, (i)

Dilwar Hussain @ Dilwore Hussain @ Kuti and (ii) Gulzar Hussain @ Phetu have prayed for their pre-arrest bail in Special (NDPS) Case No. 34/2023 registered under Sections 22(C)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 arising out of Badarpur Police Station Case No. 97/2023, corresponding to G.R. No.821/2023 apprehending their arrest in the said Special NPDS Case.

3. It is to be noted herein that the petitioners' earlier approached this Court for their pre-arrest bail in said Badarpur Police Station Case No. 97/2023, registered under Sections 22(C)/29 of the NPDS Act, now registered as Special (NDPS) Case No.34/2023, by filing an Anticipatory Bail application being AB/1946/2023 and the Court, after perusal of the Case Diary, by order dated 22.06.2023, rejected such prayers of the petitioners for their pre-arrest bail in said Badarpur Police Station Case No. 97/2023.

4. This is petitioners' second pre-arrest bail application in said Badarpur Police Station Case No. 97/2023/Special (NDPS) Case No.34/2023.

5. Placing the F.I.R of the case dated 09.04.2023, it is submitted that the informant in his written complaint dated 09.04.2023 before the Officer-in-Charge of Badarpur Police Station, clearly stated that the concerned police personnel arrived at Borof-Kol, Digirpar area by a private Bolero vehicle bearing registration No. AS-01-BF-5609 driven by one Dilwar Hussain on the night of 08.04.2023 and as such, Dilwar Hussain cannot be an accused in the case.

6. Second contention of the petitioners' for their bail in said Badarpur Police Station Case No. 97/2023 is that nothing was recovered from their possession so as to name them as accused persons under Sections 22(C)/29 of the NDPS Act.

7. Mr. Goswami, learned Additional Public Prosecutor, Assam placed the Case

Diary in original before the Court. It reveals that on 09.04.2023, complainant Sub Inspector of Police, Bijoy Goswami lodged an F.I.R to the effect that on 08.04.2023, on a specific information received from reliable source that illegal narcotic contraband dealing is to be done at Borof-Kol, Digirpar area under Badarpur Police Station. After registering the said information as a G.D Entry, the Officer-in-Charge of Badarpur Police Station authorized said Sub Inspector Bijoy Goswami for enquiry and conduct, search and seizure as well as arrest in connection to NDPS matter.

8. On reaching the spot, it was found that the two F.I.R named accused persons namely Dilwar Hussain and Gulzar Hussain, who were carrying bags, were ready for dealing and on noticing police personnel, they managed to escape by throwing away their bags. Though police personnel chased them, they ran away and managed to escape. On search of those bags, in presence of individual witnesses that were thrown away by the accused persons, suspected YABA Tablets were recovered weighing around 2.6 kilograms. During investigation, it is revealed that the F.I.R named accused persons have been absconding since the commission of the crime despite several house search and the accused persons till date are evading arrest in the said case.

9. The CDR analysis of the mobile numbers of the accused persons, on 08.04.2023 from 15:24 hrs to 01:08 hrs of 09.04.2023, the relevant towers showed that they were present at Digirpar area and after 01.08 hrs i.e. after such seizure of the bags thrown away by the accused persons, they switch off their mobile phones and thereby remained away from any contacts. Further, the CDR report also reveals that another mobile of the accused persons on 08.04.2023 at 21:35 hrs shown their presence at Bundashil area and since 22:19 hrs of 08.04.2023, their locations were shown at Digirpar. As per the Case

Diary, the CDR reports corroborate the presence of the accused persons at Digirpar during the commission of the offence on the night of 08.04.2023 during the relevant time/hours.

10. Case Diary also reveals that the FSL report of the seized suspected YABA tablets recovered from the bags that were thrown away by the accused persons that each tablet weighs about 0.1 gram that gave the positive test for Methamphetamine.

11. The Case Diary reflects that the accused persons Dilwar Hussain @ Kuti, son of Late Mathlobur Rahman is a resident of Borof-Kol, Digirpar under Badarpur Police Station in Karimganj district, Assam and Gulzar Hussain @ Phetu is also son of late Mathlobur Rahman of said Borof-Kol, Digirpar under Badarpur Police Station of Karimganj district.

12. It is not the case of the petitioners that the F.I.R named accused person Dilwar Hussain was driving the private Bolero vehicle in which the complainant along with other police personnel reached the area of occurrence on the night of 08.04.2023.

13. The Case Diary reveals sufficient incriminating materials with regard to the involvement of the accused persons in the case as the independent witnesses in their statements during investigation of the case clearly stated that they saw that the accused persons noticing police personnel, thrown away the bags from where the YABA Tablets were recovered by police in their presence.

14. Considering such incriminating materials in the Case Diary, the Court is of the view that it is not a fit case to grant pre-arrest bail to the petitioners named above for their involvement in the alleged crime.

15. Accordingly, this pre-arrest bail application of the petitioners, namely,

Dilwar Hussain @ Dilwore Hussain @ Kuti and Gulzar Hussain @ Phetu in Badarpur Police Station Case No. 97/2023/Special (NDPS) Case No. 34/2023 stands rejected.

16. Return the Case Diary.

JUDGE

Comparing Assistant