

GAHC010203422025



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

Case No. : Crl.Rev.P./369/2025

KHALILAR RAHMAN ALIAS SYED KHALILAR RAHMAN
SON OF LATE FAIZUR RAHMAN
RESIDENT OF LOCH
P.S. BAIHATA CHARIALI
DIST. KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. Y S MANNAN, MS R BEGAM, MR. C K NATH

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE SHAMIMA JAHAN

ORDER

Date : 25-02-2026

Heard Mr. YS Mannan, learned Counsel for the petitioner
and Ms A. Begum, learned Additional Public Prosecutor appearing for
the State.

2. By this application filed under Section 438 of BNSS, 2023

read with Section 442 and 528 of BNSS, 2023, the petitioner has challenged the order dated 07.07.2025 passed by the Additional Sessions Judge No.2, Kamrup(M), at Guwahati in NDPS case no. 01 of 2024 by which the prayer of the petitioner for defreezing the bank account maintained by him in State Bank of India, Baihata Chariali has been rejected.

3. The order dated 07.07.2025 which has been put to challenge by the petitioner in the instant case reveals that the petitioner was arrested and then during his arrest which was on 26.09.2023, his bank account being account no. 31352227330 maintained with the State Bank of India, Baihata Chariali was freezed.

4. The learned Additional Sessions Judge No.2, Kamrup(Metro), at Guwahati held after discussing about the urgent need of money by the petitioner and after discussing about few case laws on defreezing the account held that the petitioner was arrested in connection with North Guwahati, Police Station Case No. 111 of 2023 under Section 21(c)/29 of the NDPS Act, as well as in connection with Geetanagar, PS case no. 219 of 2021 under the same provisions of law and therefore, further held that the petitioner being a habitual offender, his account was seized as a number of transactions were seen to be in disproportionate with the petitioners known source of income.

5. The learned Court had relied on the communication dated 17.11.2023 by which the Investigating Officer had sent a letter to the District and Session Judge, Kamrup(Metro) cum Special Judge, NDPS intimating him about the freezing of the bank account of the petitioner. The Court further held that there were grounds for believing that the balance in the bank account of the petitioner are sale proceeds of illegal drugs liable for

confiscation as provided for under Section 62 of the NDPS Act.

6. In view of the same, the learned Court has concluded that it will not be proper to defreeze the bank account and rejected the petition filed by the petitioner.

7. Mr. Y.S. Mannan, learned Counsel for the petitioner has placed section 102 of the Cr.P.C., which provides that any police officer may seize any property which may be alleged or suspected to have been stolen or which may be found under circumstances which creates suspicion of commission of any offence and he submitted sub-section (3) of the said section which provides that the seizure made by the police officer should be forthwith reported to the magistrate having jurisdiction. He submits that the petitioner was arrested on 26.09.2023 and his bank account was also freezed on the same date. However, the said seizure was intimated to the Special Court, NDPS on 17.11.2023 i.e. after a lapse of almost 2 months from the date of seizure which according to the learned Counsel cannot be termed as forthwith which is mandatory requirement under Section 102(3) Cr.P.C. He further submits that the son and daughter of the petitioner were suffering from ailments and the petitioner was in dire need of the money that was available in his account which has been freezed by the bank on the request made by the police officer. To substantiate his argument, Mr. Y.S. Mannan has submitted two decisions one from the Madras High Court and one from the Gauhati High Court, wherein it was held that property mentioned in Section 102 Cr.P.C. will include bank account and under Sub-Section (3), the seizure has to be forthwith reported to the magistrate.

8. On the other hand, Ms A Begum, learned Additional Public Prosecutor appearing for the State submits that the police officer had

requested the bank authorities to freeze the bank account of the petitioner after the petitioner was arrested in connection not with one case but with two cases, both under NDPS Act and both for possession of commercial quantity of contrabands. She submits that the word forthwith which appears in sub-section 3 of Section 102 of the Cr.P.C. has been has been interpreted by the Supreme Court and the same is not interpreted as immediately and that she further submits that during the investigation, when it was found out that the said account has been used in transaction of money acquired through illegal drug business, the matter of freezing the said account has been informed to the magistrate and as such there was no delay in informing the same.

9. I have heard the Counsels and I have gone through the records.

10. The communication dated 17th of November, 2023 placed by the learned Additional Public Prosecutor for the State as well as considered by the learned Additional Sessions Judge No.2, Kamrup(Metro), Guwahati while passing the impugned order reveals that the petitioner was arrested in connection with STF PS case no. 6 of 2023, registered under Section 21(c)/29 of the NDPS Act and on being arrested, the Investigating Officer of the case requested the bank authorities to freeze the account and on such request being made, the bank authorities had in fact freezed the account of the petitioner maintained with the State Bank of India on the day of his arrest i.e. on 26.09.2023.

11. It was further stipulated in the said communication that during the course of investigation of the case as well as during analysis of the bank account, after the account was freezed, it was found out that huge

amounts of monetary transactions has been made from the concerned bank account of the petitioner and the matter of freezing was intimated to the magistrate on 17.11.2023 by the said intimation.

12. Under Section 102 of the Cr.P.C., it is specifically provided that when a police officer suspects that any property has been the stolen property or the same is in connection with commission of any offence, the said police officer can seize the said property. It is not in dispute that only when the police officers finds that the property is in connection with commission of any offence, he can seize the same.

13. In the instant case, the communication dated 17th of November, 2023 reveals that before the investigation was conducted, the police officer on the arrest of the petitioner had requested the bank authorities to freeze the account which was accordingly done.

14. It is seen that after the arrest being made, the Investigating Officer investigated into the case and before analysing the bank had already freezed the bank account of the petitioner being account no. 31352227330. The Investigating Officer found during the course of investigation that huge amounts of monetary transactions has been made from the said account which apparently is not the requirement of law. It is only when the investigation reveals that property is in connection with the commission of any offence, the same can be freezed. In the instant case, it was done beforehand which again is not legal in the eyes of law. Further, under sub-Section 3 of Section 102, the police officer seizing the bank account has to report forthwith to the magistrate having jurisdiction. However, in the instant case the intimation was done after about 2 months from the date of freezing of the said account. It may so happen in the instant case, in view of the fact

that freezing was done much before the investigation was completed and the bank accounts were analysed and thereafter when the Investigating Officer found anomalies informed the same to the magistrate concerned.

Be that as it may, this Court holds that the freezing of the bank account is not as per law as well as the intimidation was made with much delay. Furthermore, it is also the case of the petitioner that he needs the money for the treatment of his children which is stated to be very serious.

15. In view of the same, it is directed that the Investigating Officer may defreeze the account of the petitioner, the account no. being. 31352227330 maintained with the State Bank of India, Baihata Chariali and to allow the petitioner to operate the bank account by executing a bond and by taking an undertaking to produce the property before the Court as and when required without fail.

16. Further, order dated 07.07.2025 is interfered with and the same is quashed for the ends of justice.

17. Petition is disposed of.

JUDGE

Comparing Assistant