

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

Cril. Petn. No.4 of 2023

Haokhosiem Singson, aged about 40 years, S/O (late) Doukhopou
of Phaitol, Tousem Sub-Division, Tamenglong District, Manipur,
PIN – 795141.

.... *Petitioner/s*

- Versus -

The Officer-in-Charge, Tousem Police Station, Tamenglong District,
Manipur, PIN – 795141.

.... *Respondent/s*

BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

23.02.2023

Heard Mr. Th. Mahira, learned counsel for the petitioner and Mr.
Y. Ashang, learned PP for the State respondent.

[2] The petition has been filed under Section 482 Cr.P.C. for
quashing the impugned order dated 23.01.2023 passed by the Ld. Special
Judge, ND&PS Tamenglong in Cril.Misc.(Bail) Case No.1 of 2023.

By the impugned order dated 23.01.2023, the Ld. Special Court
rejected the Default Bail Application under Section 167(2) Cr.P.C. read with
Section 37A ND&PS Act, 1985 on the ground that 180 days (as per Manipur
Amendment) is the statutory period prescribed for an offence under Section
21(b) of ND&PS Act.

It is observed in the impugned order that 180 days is yet to be
completed and hence, the petitioner is not entitled to default bail under
Section 167(2) Cr.P.C.

[3] Mr. Th. Mahira, learned counsel for the petitioner points out that the petitioner was arrested on allegation of possessing contraband brown sugar of 52 grams from his residence. He draws the attention of this Court that 52 grams is intermediate as per Sl. No.56 of schedule appended to ND&PS Act. At Sl. No.56, heroin 5 grams is the small quantity and 250 grams is the commercial quantity and he submits that 52 grams is intermediate and for intermediate quantity, punishment provided under Section 21(b) of ND&PS Act is up to 10(ten) years with fine. He draws the attention of this Court to the judgment of 3(three) Judge Bench of the Hon'ble Supreme Court in ***Rakesh Kumar Paul Vs. State of Assam (2017) 15 SCC 67***. The relevant Paras are quoted below:

“2. Section 167(2)(a)(i) of the Code is applicable only in cases where the accused is charged with (i) offences punishable with death and any lower sentence; (ii) offences punishable with life imprisonment and any lower sentence and (iii) offences punishable with minimum sentence of 10 years.

3. In all cases where the minimum sentence is less than 10 years, but the maximum sentence is not death or life imprisonment then Section 167(2)(a)(ii) will apply and the accused will be entitled to grant of ‘default bail’ after 60 days in case charge-sheet is not filed.”

[4] Mr. Th. Mahira, learned counsel for the petitioner submits that as per the above cited judgment, the present case falls under Section 167(2)(a)(ii) where minimum sentence up to 10(ten) years is prescribed and hence 60 days (120 days as per Manipur Amendment) shall be applicable and the petitioner is entitled to default bail.

[5] Mr. Y. Ashang, learned PP for the State draws the attention of this Court that the FIR indicates offence under Section 400 IPC for which maximum sentence is up to life imprisonment and rigorous imprisonment of a term of 10 years. He also refers to the provision of Section 36A of ND&PS Act which empowers the Special Court established under the ND&PS Act to try any other offences and he submits that statutory period for releasing on default bail for offence under Section 400 IPC should be 180 days as per Manipur Amendment.

[6] This Court finds justification in the statements of both Mr. Th. Mahira, learned counsel for the petitioner and Mr. Y. Ashang, learned PP for the State respondent to the effect that for intermediate quantity under Section 21(b) of the ND&PS Act, 120 days will be the statutory period as per Manipur Amendment and for Section 400 IPC, the statutory period will be 180 days.

[7] With the above observations, the Criminal Petition is disposed of. The petitioner may approach appropriate forum for his grievance.

[8] Copy to be furnished to the learned counsels for the parties.

JUDGE