

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

CRIL.PETN. No. 49 of 2022

Mst. Jahan, 40 years, W/o Md. Khamba of Khurai Khomidok, P.S. Heingang,
District Imphal East, Manipur;

- On behalf of accused, Md. Sahir Khan, aged about 35 years, S/o
(L) Md. Abdul Rashid, R/o Khurai Khomidok, P.S. Heingang, District
Imphal East, Manipur, Pin Code No. 795114.

....Petitioner

- Versus -

1. State of Manipur, represented by Secretary, Home, Government of
Manipur, stationed at Old Secretariat, Bapupara, District, Imphal West:
Pin. No. 795001.
2. Officer-in-Charge, Thoubal Police Station at Thoubal District, Thoubal,
Manipur, NH 102, Pin Code: 794138.

...Respondents

BEFORE

HON'BLE THE CHIEF JUSTICE MR. SANJAY KUMAR

16.01.2023

By way of this criminal petition, filed under Section 482 Cr.P.C., the
petitioner assails the orders dated 20.09.2022 and 23.09.2022 passed by the
learned Special Judge (ND & PS), Thoubal, in Cril. Misc.(B) Case No. 298 of 2022
and Cril. Misc.(B) Case No. 323 of 2022 respectively. Both these miscellaneous
cases were filed by the State of Manipur in relation to F.I.R. No. 67(03) 2022 on
the file of Thoubal Police Station, registered under Sections 21(c), 29 & 60(3)
of the Narcotic Drugs & Psychotropic Substances Act, 1985. The petitioner's
brother is arrayed as the accused in the said F.I.R.

Heard Mr. M. Ibotombi, learned counsel for the petitioner; and
Mr. Athouba Khaidem, learned PP, appearing for the State.

The subject FIR was registered in connection with the alleged seizure
of 50 soap cases containing suspected brown sugar from the possession of the
petitioner's brother. The petitioner's brother was arrested on 25.03.2022, viz.,

the day on which the F.I.R. was registered. Admittedly, a charge-sheet was not filed within the stipulated extended period of 180 days, in terms of Section 36A(4) of the Narcotic Drugs & Psychotropic Substances Act, 1985. The petitioner's brother thereupon applied for statutory default bail, vide Cril. Misc. (B) Case No. 323 of 2022. It is stated that it was only when bail was denied to him, vide order dated 23.09.2022, that he came to know that extension had been granted by the learned Special Judge for completing the investigation within 1 year, vide order dated 20.09.2022 passed in Cril. Misc.(B) Case No. 298 of 2022. It is against these two orders that the petitioner raised a challenge on behalf of her brother, as his next friend, by way of this criminal petition filed under Section 482 Cr.P.C.

Mr. M. Ibotombi, learned counsel, would contend that the petitioner's brother was not even produced before the learned Special Judge at the time of the hearing of Cril. Misc. (B) Case No. 298 of 2022, whereby time for completing the investigation was extended. He would point out that this aspect was specifically raised by the learned counsel for the accused during the hearing of the bail application in Cril. Misc. (B) Case No. 323 of 2022 but despite the same, the learned Special Judge brushed it aside and dismissed the bail application. He would place reliance on the judgment of the Supreme Court in **Jigar @ Jimmy Pravinchandra Adatiya Vs. State of Gujarat (Criminal Appeal No. 1656 of 2022 and batch, decided on 23.09.2022)**. Therein, the Supreme Court was dealing with extension of time for completing the investigation in relation to offences under the Gujarat Control of Terrorism and Organized Crime Act, 2015. The stipulated period for completing such

investigation in the ordinary course was 180 days, akin to the time stipulated in relation to offences under the Narcotic Drugs & Psychotropic Substances Act, 1985. The time for completing investigation was extended by the Special Court without the accused being presented before it. In that context, the Supreme Court noted that the accused would be entitled to oppose the grant of extension of time, in terms of the law laid down by the Constitution Bench in **Sanjay Dutt Vs. State, through CBI, Bombay [(1994) 5 SCC 410]**. The Supreme Court held that the orders extending the period of investigation were rendered illegal by the failure of the authorities to produce the accused before the Special Court, either physically or virtually, when the prayer for grant of extension made by the Public Prosecutor was considered.

Significantly, the Superintendent of Police, Thoubal District, conceded in his affidavit-in-opposition dated 06.12.2022 that the presence of the accused was not procured either physically or through video conference on 20.09.2022, when the application for extension of time for completing the investigation was considered by the learned Special Judge (ND & PS), Thoubal.

In the light of the law laid down by the Supreme Court, referred to *supra*, this failure on the part of the prosecution is sufficient to render unsustainable the extension of time granted by the learned Special Judge (ND & PS), Thoubal, vide order dated 20.09.2022. In consequence, rejection of the default bail application filed by the accused in Cril. Misc. (B) Case No. 323 of 2022, on the ground that extension of time had already been granted for completing the investigation, also cannot stand.

The orders dated 20.09.2022 and 23.09.2022 passed by the learned Special Judge (ND & PS), Thoubal, in Cril. Misc. (B) Case Nos. 298 & 323 of 2022 respectively, are accordingly set aside and both the miscellaneous cases are restored to the file of the learned Special Judge (ND&PD), Thoubal, for consideration afresh in accordance with law, duly abiding by the mandate of affording an opportunity of hearing to the accused before considering the plea of the prosecution for extending the time to complete the investigation. The bail application filed by the accused shall also be considered simultaneously.

Cril. Petn. No. 49 of 2022 is accordingly allowed.

CHIEF JUSTICE

Indrajeet