

GAHC040002032023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)
Case No. : BA 13/2023

1:Yater Taggu
W/o Shri Taket Jerang,
R/o Govt. Quarter No. 284/T II located at E Sector, Naharlagun, PO/PS Naharlagun,
Arunachal Pradesh and Permanent Resident of Mori Village, PO/PS Rumgong,
District Siang, Arunachal Pradesh.
VERSUS
1:THE STATE OF AP
Represented by Special Public Prosecutor (CBI)

Advocate for the Petitioner : Adam Tatak
Advocate for the Respondent : Marto Kato

BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 22-02-2023

Heard Mr. Adam Tatak, learned counsel for the petitioner and also heard Mr. M. Kato, learned Standing counsel for the CBI.

This is an application under Section 439 Cr.P.C. filed by Smti. Yater Taggu for grant of bail to the accused, namely, Sri Taket Jerang in connection with SIC (Vig.) PS Case No. 12/2022/CBI Case No. RC0172023A0001 under Section 120B/406/407/409/420 IPC read with Section 7/8/13 (2) of PC Act, 1988.

It is submitted by the learned counsel for the petitioner that the alleged

accused, aforementioned, is behind the bar for the last 98 days and till date, the concern I.O. of the case has failed to furnish the Charge-Sheet and accordingly, the present accused is entitled for default bail under Section 167 (2) Cr.P.C. Further, it is submitted by the learned counsel for the petitioner that the I.O. has got sufficient time for his custodial interrogation as he is behind the bar for the last 98 days.

In this context Mr. M. Kato, learned Standing counsel for the CBI has submitted that the written objection could not be filed by the CBI but he has verbally submitted that the Charge-Sheet could not be filed in this case as the CBI has taken up for investigation only after the notification, dated 02.01.2023 but there is sufficient progress in the investigation and the CBI may file Charge-Sheet within a short period. However, in other case for the accused petitioner being SIC (Vig.) PS Case No. 11/2022 is also taken over by the CBI where the Charge-Sheet has already been filed.

The learned counsel for the petitioner further submits that it cannot be considered from when the CBI took up for investigation but it has to be considered that the accused is behind the bar for the last 98 days i.e. beyond his statutory period and accordingly, he is entitle for default bail.

Furthermore, the learned counsel for the petitioner has relied on a decision of Hon'ble Apex Court in the case of Rakesh Kumar Paul-vs-State of Assam; reported in [2017] 3 ACR 2474; [2017] 178 AIC 75; and [2017] 0 AIR (SC) 3948 and accordingly submitted that default bail is a infeasible right and the Court has to consider the default bail even if there is no written application made before the Court and considering the statutory requirements, the bail of the

accused should be considered.

The learned counsel for the petitioner mainly stressed upon Paragraphs Nos. 40, 44, 100 & 109 of the above relied judgments, which reads as under:-

“40. In the present case, it was also argued by learned counsel for the State (1996) 1 SCC 722 that the petitioner did not apply for ‘default bail’ on or after 4th January, 2017 till 24th January, 2017 on which date his indefeasible right got extinguished on the filing of the charge sheet. Strictly speaking this is correct since the petitioner applied for regular bail on 11th January, 2017 in the Gauhati High Court – he made no specific application for grant of ‘default bail’. However, the application for regular bail filed by the accused on 11th January, 2017 did advert to the statutory period for filing a charge sheet having expired and that perhaps no charge sheet had in fact being filed. In any event, this issue was argued by learned counsel for the petitioner in the High Court and it was considered but not accepted by the High Court. The High Court did not reject the submission on the ground of maintainability but on merits. Therefore it is not as if the petitioner did not make any application for default bail – such an application was definitely made (if not in writing) then at least orally before the High Court. In our opinion, in matters of personal liberty, we cannot and should not be too technical and must lean in favour of personal liberty. Consequently, whether the accused makes a written application for ‘default bail’ or an oral application for ‘default bail’ is of no consequence. The concerned court must deal with such an application by considering the statutory requirements namely, whether the statutory period for filing a charge sheet or challan has expired, whether the charge sheet or challan has been filed and whether the accused is prepared to and does furnish bail”.

“44. Strong words indeed. That being so we are of the clear opinion that adapting this principle, it would equally be the duty and responsibility of a court on coming to know that the accused person before it is entitled to ‘default bail’, to at least apprise him or her of the indefeasible right. A contrary view would diminish the respect for personal liberty, on which so much emphasis has been laid by this Court as is evidenced by the decisions mentioned above, and also adverted to in Nirala Yadav”.

“100 Even if I were to assume that two views are possible and third category envisaged in [Section 167\(2\)\(a\)\(ii\)](#) is ambiguous, as suggested by learned brother Pant J., then also I have no doubt in my mind that a

statute which curtails the liberty of a person must be read strictly. When any human right; a Constitutional fundamental right of a person is curtailed, then the statute which curtails such right must be read strictly. Section 167 of the Code lays down the procedure established by law by which a person can be deprived of his personal liberty, guaranteed to him under Article 21 of the Constitution of India. If two meanings could be attributed to such a provision then the courts must lean towards liberty and accept that interpretation of the statute, which upholds the liberty of the citizen and which keeps the eternal flame of liberty alive. If words are ambiguous then also the court should be reluctant to accept that interpretation which curtails the right of a human being of being free”.

“109. A reading of the aforesaid judgments leaves no manner of doubt that if an accused files an application for grant of default bail and is willing to furnish bail then he is deemed to have exercised his right to avail of bail and this right cannot be defeated by filing the charge-sheet thereafter”.

After hearing the submissions of learned counsel of both the sides, it is seen that in spite of lapse of statutory period, the investigating authority is not in a position to file Charge-Sheet against the accused or final form of the accused and in the same time, it is seen that the investigating authority also not filed any objection, though, the time was granted to the concern authority. The case may be taken up by the CBI on the first part of January but the facts remains same that the accused has been languishing in jail custody for the last 98 days and till then, failed to furnish the Charge-Sheet and accordingly, considering the entire aspect of the case and the provision under Section 167(2) Cr.P.C. and also considering the view of the Hon’ble Apex Court, I find that the present accused is entitled to default bail and accordingly, the accused, namely, **Shri Taket Jerang** is allowed to go on bail on furnishing a bail bond of Rs.20,000/- with a suitable surety of like amount to the satisfaction of the learned Sessions Judge-cum-Special Judge (Fast Track Court), Yupia in connection with SIC (Vig.) PS Case No. 12/2022/CBI Case No. RC0172023A0001 under Section 120B/406/407/409/420 IPC read with Section 7/8/13 (2) of PC

Act, 1988.

The above privilege is, however, subject to the following conditions:-

- (1) The petitioner shall co-operate in the investigation as and when called/summoned for the investigation;
- (2) The petitioner shall not hamper/tamper with the evidence of the prosecution witnesses or the investigating agency; and
- (3) The petitioner shall not leave the territorial jurisdiction of learned Sessions Judge-cum-Special Judge (Fast Track Court), Yupia, without prior permission.

In view of the above, this Bail application stands disposed of.

JUDGE

Comparing Assistant