

GAHC040014402022



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

Case No. : Crl.Petn. 128/2022

1:Chailak Jingdam
Son of Sri Manlai Jingdam,
Resident of Village Khasa, PO/PS Pongchua, District Longding Arunachal Pradesh,
presently languishing in custody at UTP Cell at Longding, District Longding,
Arunachal Pradesh.

VERSUS

1:THE STATE OF AP
Represented by the Public Prosecutor.

Advocate for the Petitioner : Jaya Doji

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 17.03.2023

Heard Ms. J. Doji, learned Legal Aid Counsel appearing on behalf of the accused petitioner. Also heard Ms. T. Jini, learned Additional Public Prosecutor, representing the State respondents.

2. The background fact leading to filing of this petition under Section 482 of Cr.P.C. are as under:-

- I. An F.I.R. was lodged on 08.02.2021 before the Officer in Charge of Pangchua Police Station inter alia alleging that the present petitioner/accused shot fire with his SBML Gun on 07.02.2021 and injured as many as six persons. Accordingly, a case being Pangchua P.S. Case No. 05/2021 under Section 307 of IPC read with Section 25 (1A)/27 of Arms Act, was registered.
 - II. The accused / petitioner was arrested on 09.02.2021. His statement was recorded and he was sent to the judicial custody.
 - III. As no charge sheet was filed during the statutory period of 90 days, the learned Judicial Magistrate, 1st Class, Londging, granted default bail to the petitioner under Section 167 (2) of the Cr.P.C. under its order dated 01.06.2021 subject to furnishing of bail bond of Rs. 30,000/- and two sureties.
 - IV. Though the bail was granted in the month of June, 2021, as the accused/petitioner could not executed the bail bond and furnish the sureties, he was languishing in jail.
 - V. It is the case of the accused petitioner that as the injured persons were of his fellow villagers none of his family members, relatives are coming forward either to furnish bail bond or to stand as sureties.
3. Subsequently, Under Trial Review Committee (UTRC) in its meeting recommended that the accused petitioner may release on P.R. bond. Accordingly, on such recommendation, the learned Judicial Magistrate, 1st Class, Londging, under its order dated 05.03.2022, directed the accused person to be released on execution of P.R. bond with one surety to the satisfaction of the said Court. However, the petitioner still languishing in

the jail for want of any surety inasmuch as the villagers and his family members have refused to stand as surety.

4. Accordingly, the petitioner approached the learned Session Judge, Khonsa, Tirap District, with a prayer to strike off the condition surety so that he can be released. Such petition was registered as KSA I.A. No. 13/2022. Such prayer was dismissed by the learned Session Judge, Khonsa, Thirap District under its order dated 30.08.2022.
5. In the meantime, the Division Bench of this Court in W.P(C). Suo Moto No. 8/2018 while dealing with cause of under trial prisoners, under its order dated 19.10.2022, called for certain details regarding under trial prisoners. In terms of the said order, the learned Additional Senior Government Advocate, State of Arunachal Pradesh requested the Member Secretary to the Arunachal Pradesh State Legal Services Authority, by his communication dated 20.10.2022 to furnish the status of the present petitioner.
6. Thereafter, the High Court Legal Services Committee, Itanagar Permanent Bench of Gauhati High Court, passed an order holding that the petitioner is entitled for free legal services as per Section 12 of the Legal Services Authority Act, 1987, and accordingly, Ms. J. Doji, learned counsel was appointed to assist the petitioner and to file fresh bail application before this Court. In the aforesaid backdrop, the present petition is filed.
7. The fact remains that the order dated 01.06.2021, passed by the learned Judicial Magistrate 1st Class, Londging clearly shows that though the petitioner was arrested on 08.02.2021, and in custody till 01.06.2021 i.e. till passing of the order, no charge sheet was filed. Accordingly in terms of

Section 167 (2) of the Cr.P.C. bail was granted subject to furnishing of bail bond of Rs. 30,000/- and two sureties to the satisfaction of the Court.

8. The fact also remains that in view of the recommendation of the Under Trial Review Committee (UTRC), the matter was again taken up on 05.03.2022 and it was the conclusion that accused has been unable to execute the bail bond due to poverty and therefore, the UTRC recommended that the accused be released on P. R. bond. On the basis of such recommendation, it was directed by the learned Magistrate that the accused be released on execution of P.R. bond with one surety. However, the petitioner could not file the surety on account of his destituteness and for the reason that.
9. Ms. Jini, learned Additional P.P., submits that the indefeasible right to be release on bail has been extinguished inasmuch as the petitioner has failed to provide the surety prior to filing of the charge sheet and therefore, the petitioner need to file an application under Section 439 of Cr.P.C. before the Magistrate or before this Court.
10. The Hon'ble Apex Court in the case of ***Sanjay Dutta –Vs- State*** through CBI reported in ***1994 5 SCC 410***, held that the indefeasible right accrued to an accused to be released on bail by virtue of Section 167 (2) Cr.P.C. is enforceable only prior to filing of the charge sheet and it does not survive or remain enforceable on charge sheet being filed, **if already not avail of.** (Emphasise supplied by this Court).
11. The expression **if already not avail of** was explained by the Hon'ble Apex Court in ***Uday Mohanlal Acharyaa –Vs- State of Maharashtra*** reported in ***2001 5 SCC 453*** and was interpreted that on expiry of period

specified in para (a) of the proviso to sub section 2 of section 167 of Cr.P.C., if the accused files an application for bail and offers also to furnish the bail on being directed then it has to be held that the accused has availed of his in defaceable right even though the Court has not considered the said application and has not indicated the terms and conditions of the bail and the accused has not furnished the same.

12. In the case in hand, it is not a case of exercising or not exercising the right as aforesaid, rather it is a case where already the learned Magistrate has granted bail to the petitioner prior to filing of the charge sheet. Thus, the submission of Ms.Jini, learned Additional P.P. cannot be accepted as the petitioner was already granted bail, only thing remained to be done was that accused was to furnish the bail bond. Therefore, the indefeasible right which was matured and benefit of such right was also granted, cannot be extinguished for non-furnishing of the bail bond or for being unable to provide the surety for the reason of filing charge sheet in the meantime.
13. The Hon'ble Apex Court while dealing with delay in release of prisoners after getting bail, in *Suo Moto (B) Writ Petition (Criminal) No. 4/2021*, under its order dated 30.01.2023, issued certain directions. In the direction No. 6, the Hon'ble Apex Court directed that if the bail bonds are not furnished within one month from the date of grant of bail, the concerned Court may *suomoto* take up the case and consider whether the conditions of bail require modification/relaxation.
14. Now coming to the present case, the pleading in the petition shows that the family members and relatives had denied to stand as surety for the petitioner and for such reason, he has languishing in jail even after grant

of bail.

15. In the totality of the matter, this Court is of the view that the right that has been accrued to the petitioner needs to be protected in the given facts and circumstances of the present case. At the same time, it is also to be ensured that the petitioner attends and participate in the trial and he does not fly away from justice. Such attendance can be ascertained if stringent conditions are imposed.
16. Accordingly, it is provided that the petitioner be released on P.R. bond without surety with the following conditions:-
 - I. The petitioner is to give his attendance every day before the Officer-in-Charge of Pongchua Police Station.
 - II. The petitioner is to make himself available on each and every date fixed by the learned trial Court in connection with LDG GR No. 10/2021, PHC PS Case No. 05/2021, under Section 307 IPC read with Section 25(1A)/27 of Arms Act.
 - III. The learned trial Court may add any additional condition for securing attendance of the accused petitioner.
17. With the aforesaid, the present petition stands disposed of.
18. While parting with the record, this court places on record the able assistance rendered by Ms. J Doji, learned Legal Aid counsel. The Legal Aid Committee, Gauhati High Court, Itanagar Permanent Bench shall pay the remuneration to Ms. J Doji in terms of extent norms.

JUDGE

Comparing Assistant