

GAHC040016842023



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

Case No. : BA/127/2023

Rasap Techhi Tara

S/o Rebia Techhi Tara, A resident of PTC, Banderdewa bear near Petrol, Niya Colony,
P.O/P.S Banderdewa, District Papum Pare, Arunachal Pradesh.

VERSUS

THE STATE OF AP

represented by the public prosecutor/special Public prosecutor.

Advocate for the Petitioner : Aso Dalbong

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MR. JUSTICE BUDI HABUNG**

ORDER

Date : 13.12.2023

Heard Mr. T. Tapak, learned counsel for the petitioner. Also heard Mr. T. Ete, learned Additional Public Prosecutor for the State of Arunachal Pradesh.

2. This is an application under Section 439(1)(a) read with Section 167(2)(a) (ii) of the criminal procedure code 1973, praying for release of the accused on default bail.

3. Mr. T. Tapak, learned counsel for the petitioner submits that basing on the FIR lodged on 06.10.2023, the accused **Shri Biswajit Doley** was arrested in connection with Itanagar P.S. Case No. 242/23 under Section 21(b)/29 of NDPS Act, 1985 on 06.10.2023 and he was remanded on 07.10.2023. And since then, the accused has been languishing in the police/judicial custody till date. Although, 67 days has lapsed since the arrest of the accused but the police have failed to file the charge-sheet into the case till date and hence, the accused is entitled to be considered for his release on bail under the provision of Section 167(2)(a)(ii) of Cr.P.C.

4. The learned counsel for the petitioner further submits that on expiry of the statutory period of 60 days the petitioner moved bail application before the learned Special Judge NDPS Act, Yupia praying for release of the accused on default bail. However, the petitioner was informed that the learned Special

Judge is out of station on leave till 14.12.2023 and as till 14th the accused would be under custody for another 6 more days despite of having a right accrued to him to be released on default bail immediately after the expiry of the statutory period. Hence, filed this application praying for release of the accused on default bail. And since the petitioner has not withdrawn the said bail application pending before the Special Judge NDPS Act, as the presiding Judge is out of station, the record was called for along with the Case Diary.

5. Mr. T. Ete, learned Additional Public Prosecutor produced the case record of bail application No. 325 to 326/2023 pending before the learned Court of Special Judge NDPS Act, Yupia as well as the Case Diary of the above P.S. Case, and I have perused the same.

6. The record reveals that the accused was arrested on 06.10.2023 and remanded on 07.10.2023 in connection with Itanagar P.S. Case No. 242/2023 under Section 21(b)/29 of NDPS Act and although 67 days has expired since the arrest of the accused but the police has not yet submitted the charge-sheet into the case till date. Under the circumstances the accused is entitled to be considered for his release on bail under the provision of Section 167(2)(a)(ii) of Cr.P.C. It is settled law that if the police failed to submit charge-sheet into the case even after the expiry of the statutory period, the accused has an indefeasible right to be considered for his release on bail under the provision of Section 167(2)(a)(ii) of Cr.P.C, if he is ready to furnish bail.

7. In view of the above provision of law, this bail application is allowed. The

accused is directed to be released on execution of bail bond of Rs. 20,000/- (Rupees Twenty thousand) only with one surety of like amount to the satisfaction of the learned Special Judge NDPS Act, Yupia within 10(ten) days from today.

8. With the above observation, this bail application is allowed and disposed of.

9. Return the LCR and CD immediately.

JUDGE

Comparing Assistant