

GAHC010003592023



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

Case No. : Bail Appln./124/2023

PETER HAOKIP
S/O- LATE LALPU HOOKIP, R/O- MALNAM, P.O AND P.S-
CHURACHANDPUR, DIST- CHURACHANDPUR, MANIPUR

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR A SHARMA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 09-01-2023

Heard Mr. A Sharma, learned counsel for the accused and Mr. B.B. Gogoi, learned Addl. PP, appearing for the State Respondent.

This application under section 439 Cr.P.C., is preferred by the accused, namely, ***Peter Haokip***, who is languishing in jail hajot in connection with ***Dillai PS Case No.17/2022*** under section

21(b)/24/29 NDPS Act, corresponding to GR Case No.68/2022, pending before the Court of learned Special Judge, NDPS Act, Karbi Anglong, Diphu.

The said case has been registered on the basis of an FIR lodged by SI (P) Akash Gogoi, Dillai PS to the effect that acting on a tip off, they have intercepted one Hyundai I10 Car bearing registration No.MN 01 AK 3721, which was coming from Dimapur side and while conducting search of the said vehicle they have recovered 15 numbers of identical soap boxes containing suspected heroin which was kept concealed inside the dash board and back arch of the wheel of the said car and they have also apprehended the driver of the vehicle, namely, Peter Haokip and one lady Ms. Kimjully Khongsai of Manipur and thereafter, they have seized the suspected heroine preparing seizure list in presence of the witnesses and after owning the same, they found the weight to be 194.88 gms.

Mr. Sarma, learned counsel for the accused submits that the accused was arrested on 27.06.2022 and the charge sheet was submitted on 31.08.2022 on the 65th day and as such, according to Mr. Sarma, the accused is entitled to default bail and therefore, Mr. Sarma contended to allow this petition.

Mr. Sarma has also referred one case law of Tripura High Court, rendered in the case of ***Sri Devendra Kumar Singh Vs. Central Bureau of Investigation (CBI), represented by the Director***, reported in ***2019 (194) AIC 526***.

On the other hand, Mr. BB Gogoi, learned Addl. PP submits that after investigation, the IO has laid charge sheet against another co-

accused and before submission of charge sheet, the accused has not applied for default bail and no such petition is pending before the learned court below and as such, he is not entitled to default bail in view of the judgment of the Hon'ble Supreme Court in the case of ***M Rabindran Vs. Intelligence Officer, Directorate of Revenue Intelligence***, reported in ***(2021) 2 SCC 485***.

Having heard the submission of learned Advocates for both the sides, I have carefully gone through the petition and the documents placed on record and also perused the case laws referred by the learned Advocates for both the sides and I find substance in the submission so advanced by Mr. Gogoi, learned Addl. PP.

It appears that before filing of charge sheet on 65th day, the accused has not applied for default bail and no petition was pending before the learned court below and as such, in view of the law laid down by the Hon'ble Supreme Court in the case of ***M Rabindran Vs. Intelligence Officer, Directorate of Revenue Intelligence*** (supra) in criminal appeal No.325/2015, where it has categorically been held by the hon'ble Supreme Court that, where the accused failed to apply for default bail when the right accrues to him and subsequently a charge sheet, additional complaint or a report seeking extensions of time is preferred through the Magistrate, the right to default bail would be extinguished. The magistrate would be at liberty to take cognizance of the case or grant further time for completion of investigation as the case may be, though the accused may still be released on bail on other provisions of Cr.P.C.

It appears that one of the co accused namely, Kimjully

Khongsai has already been enlarged on bail by this Court in BA No.3352/2022 vide order dated 05.02.2022, the accused is behind the bar for 194 days, Mr. Sarma, learned counsel for the accused submits that the accused will participate in the trial.

In view of the above, this Court is of the view that a case for granting bail is made out and accordingly, it is provided that on furnishing a bond of Rs.50,000/- with one surety of the like amount to the satisfaction of the learned Special Judge, Karbi Anglong, Diphu, the accused be enlarged on bail.

The instant application stands disposed of.

JUDGE

Comparing Assistant