

GAHC010066342023



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

Case No. : Bail Appln./1160/2023

JHON ANTHONY SWAMY
S/O PHILOMEN RAJ ANTHONY SWAMY
R/O H/NO. 240, MOHINI CHOWK, JAPORIGOG, P.S. DISPUR, DIST. KAMRUP
(M), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. K K HANDIQUE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

~~25-04-2023~~

Heard Mr. K.K. Handique, learned counsel for the petitioner. Also heard Mr. B.B. Gogoi, learned Additional Public Prosecutor, Assam.

This bail application is filed by the petitioner, namely, Jhon Anthony Swamy, who is seeking bail in connection with the Dispur P.S. Case No.122/2023

registered under Sections 376(2)(I) of the IPC.

The petitioner was arrested on 21.01.2023 and since then, he has been in custody.

Case diary, as called for, has not been received as on date. However, learned Addl. P.P. submits that further time be granted to produce the case diary.

From the case records, it is seen that the petitioner was arrested on 21.01.2023 and as on date he has completed more than the statutory period of 90 days as prescribed under the statute. Accordingly, under the provisions of Section 167 (2) Cr.P.C. The learned Addl. PP has submitted that no Charge-sheet has been filed as on date nor has any application been filed seeking extension of the period of detention as on date.

As has been held in ***Rakesh Paul Vs. State of Assam***, reported in ***(2017) 15 SCC 67*** and ***M. Ravindran Vs. Intelligence Officer, Directorate of Revenue Intelligence***, reported in ***(2021) 2 SCC 485***, when the accused applies for bail under Section 167(2) Cr.P.C. upon expiry of the statutory period, the Court must release him on bail forthwith. The rights of the accused-petitioner under Section 167 can also be enforced orally as has been held by the Apex Court in ***Rakesh Paul*** (Supra).

Accordingly, considering the length of detention and considering the prayer made by the learned counsel for the accused-petitioner invoking his right under Section 167(2) of the Cr.P.C., as the petitioner has been in detention for more than statutory period prescribed and no charge-sheet having been filed as on date, this Court directs the petitioner be released on default bail.

Accordingly,, the accused-petitioner, named above, in connection with the aforementioned case, shall be released on bail forthwith on furnishing a bail

bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with 1 (one) local surety of like amount to the satisfaction of the learned CJM, Kamrup (M), subject, of course to the following conditions:

- i) That the petitioner shall co-operate with the investigation as and shall appear before the IO as and when required till the investigation is completed;
- ii) That the petitioner shall not hamper or tamper with the investigation in any manner;
- iii) That the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police office; and
- iv) That the petitioner shall not change his residence without obtaining prior written permission from the concerned investigating officer of the case.

In the event, the petitioner is found to have violated any of the above conditions or is found to be involved in other offences, the Investigating Officer shall be at liberty to apply for recall/cancellation of the bail granted to the petitioner.

Accordingly, the bail petition is allowed and disposed of.

JUDGE

Comparing Assistant