

GAHC010140742023



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

Case No. : Bail Appln./2258/2023

ARUP DEKA
S/O KAILASH DEKA
R/O NEAR FERRY LAND HIGH SCHOOL, CHECKGATE, KHANAPARA,
BASISTHA, GUWAHATI,
DIST. KAMRUP (METRO), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H ROHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA
ORDER

Date : 11.10.2023

- 1.** Heard Mr. Y. S. Mannan, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State.
- 2.** This bail application has been preferred under Section 439 of Code of

Criminal Procedure, 1973, praying for bail of the petitioner, namely, Shri Arup Deka, who has been detained behind the bar since 20.02.2023 (since last 233 days), in connection with Sessions Case No. 91/2023 corresponding to Noonmati P.S. Case No. 480/2022 under Sections 365/382/120B/302/201 of the Indian Penal Code, which is pending in the Court of learned Sessions Judge, Kamrup (Metro), Guwahati.

3. The gist of accusation, in this case, is that on 21.11.2022, one Nirmmalya De, had lodged an FIR before the Officer-In-Charge of Noonmati Police Station, *inter-alia*, alleging that his aunt namely, Sankari De along with her son, namely, Amar Jyoti De were missing mysteriously from their residence. It is also stated in the FIR in this regard that one Smt. Bandana Kalita who is the daughter-in-law of the said Sankari De also lodged a missing person report before the police on 29.08.2022. It is further stated in the FIR that the said Sankari De was the owner of the five numbers of flats at Lal Ganesh, Guwahati which were given on rent by her. However, after lodging of missing report, Smt. Bandana Kalita collected the rent of the Narengi premises of the aunt of the first informant and also let out the premises to three new tenants. It is further stated in the FIR that the aunt of the first informant had left her phone along with her two ATM cards with Smt. Bandana Kalita and it was found that she had withdrawn money from the said account of Sankari De by using her ATM cards suspecting foul play, the said FIR was registered.

4. On receipt of the said FIR, Noonmati P. S. Case No. 480/2022 was

registered under Sections 365/382/120B/302/201 of the Indian Penal Code.

5. During the course of the investigation, the police arrested Smt. Bandana Kalita i.e., the daughter-in-law of the missing person namely, Sankari De and on the basis of the statement of Smt. Bandana Kalita, one Shri Dhanti Dekka and the present petitioner, namely, Shri Arup Dekka were also arrested.

6. In her statement under Section 161 of the Code of Criminal Procedure, 1973 given to the Investigating Officer, the main accused namely, Smt. Bandana Kalita revealed that she had killed both Sankari De and Amar Jyoti De with the help of her boy friend namely, Shri Dhanti Dekka and had disposed off the dead body somewhere in Meghalaya.

7. The police recovered some of the body parts on the basis of disclosure made by the main accused Smt. Bandana Kalita which were suspected to be of the deceased and same were sent for post-mortem examination.

8. Thereafter, the Investigating Officer submitted the charge-sheet on 12.05.2023 against the accused persons including the present petitioner mentioning in the charge-sheet that "*the further investigation in the case is under way so the charge-sheet submitted now may be treated as a part charge-sheet and supplementary/additional charge-sheet will be submitted u/s 173 (8) in due course of time*".

9. Mr. Y. S. Mannan, learned counsel for the petitioner has submitted that the present petitioner is innocent and has been falsely implicated by the main accused namely, Smt. Bandana Kalita in this case.

10. Mr. Y. S. Mannan, learned counsel for the petitioner has also submitted that in the instant case though the police recovered the body parts of a female dead body which are stated to be that of the deceased Sankari De, however, the FSL report to that effect is still awaited and the Investigating Officer has categorically stated in the charge-sheet, which is submitted by him on 12.05.2023, that the said charge-sheet is a part charge-sheet. It is also submitted by the learned counsel for the petitioner that the Investigating Officer has also specifically mentioned in the charge-sheet that the evidence gathering process is still going on and grant of bail to the accused persons would hamper the evidence gathering process which itself shows, that the charge-sheet was submitted without completion of the investigation only to deprive the accused persons the benefit of default bail under Section 167 (2) of the Code of Criminal Procedure, 1973.

11. Learned counsel for the petitioner has also submitted that the petitioner had also approached learned Sessions Judge, Kamrup (Metro) praying for default bail on the ground that the charge-sheet was laid without completion of the investigation, however, by order dated 17.06.2023, learned Trial Court rejected the prayer for default bail holding that the charge-sheet has been laid after completion of the investigation except receipt of report from Forensic Science Laboratory.

12. Mr. Y. S. Mannan, learned counsel for the petitioner has also submitted that in the meanwhile charges are also framed against the petitioner and the

trial has already begun and 13 (thirteen) numbers of independent witnesses have already been examined.

13. Learned counsel for the petitioner has further submitted that though the identification of dead body of the deceased is crucial in the instant case and same has also been realised by the Investigating Officer and therefore, the recovered parts of the human dead body were sent for the forensic examination, however, the learned Sessions Judge, has erroneously held that the investigation is complete merely on the ground that the charge-sheet has been shown to have laid under Section 173 (2) of the Code of Criminal Procedure, 1973.

14. Learned counsel for the petitioner has also submitted that the Investigating Officer has categorically mentioned in the charge-sheet dated 12.05.2023 itself that the investigation was still going on, hence, learned Sessions Judge was wrong in coming to a finding that the investigation is complete and denying the default bail to the present petitioner on that ground.

15. In support of his submission, Mr. Y. S. Mannan, learned counsel for the petitioner has cited the ruling of Hon'ble Apex Court in "***Ritu Chhabaria Vs. Union of India and Others***" reported in ***2023 SCC online SC 502***, wherein it was observed as follows:

"24. It is also to be noted that as per the scheme of Cr.P.C., an investigation of a cognizable case commences with the recording

of an FIR under Section 154 Cr.P.C. If a person is arrested and the investigation of the case cannot be completed within 24 hours, he has to be produced before the magistrate to seek his remand under Section 167(2) of the Cr. P.C. during continued investigation. There is a statutory time frame then prescribed for remand of the accused for the purposes of investigation, however, the same cannot extend beyond 90 days, as provided under Section 167(2)(a)(i) in cases where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years and 60 days, as provided under Section 167(2)(a)(ii), where the investigation relates to any other offence. The relevant section further provides that on expiry of the period of 90 days or 60 days, as the case may be, the accused has a right to be released on default bail in case he is prepared to and furnishes bail.

25. This right of statutory bail, however, is extinguished, if the charge sheet is filed within the stipulated period. The question of resorting to a supplementary charge sheet u/s 173(8) of the Cr.P.C. only arises after the main charge

sheet has been filed, and as such, a supplementary charge sheet, wherein it is explicitly stated that the investigation is still pending, cannot under any circumstance, be used to scuttle the right of default bail, for then, the entire purpose of default bail is defeated, and the filing of a charge sheet or a supplementary charge sheet becomes a mere formality, and a tool, to ensue that the right of default bail is scuttled.

26. It is thus axiomatic that first investigation is to be completed, and only then can a charge sheet or a complaint be filed within the stipulated period, and failure to do so would trigger the statutory right of default bail under Section 167(2) of Cr.P.C. In the case of Union Of India v. Thamisharasi [and](#) Others [(1995) 4 SCC 190], which was a case under the Narcotic Drugs and Psychotropic Substances Act, 1985, on finding that the investigation was not complete and a charge sheet was not filed within the prescribed period, denial of default bail was held to be in violation of Article 21 of the Constitution of India, and it was further held that even the twin limitation on grant of bail would not apply.

27. Further, in the case of Ashok Munilal Jain v. Assistant Director, Directorate of Enforcement [(2018) 16 SCC 158], it was held that the right of default bail under section 167(2) Cr.P.C was held to be an indefeasible right of the accused even in matters under PMLA.

28. Therefore, in light of the abovementioned discussions, it can be seen that the practice of filing preliminary reports before the enactment of the present Cr.P.C has now taken the form of filing charge sheets without actually completing the investigation, only to scuttle the right of default bail. If we were to hold that charge sheets can be filed without completing the investigation, and the same can be used for prolonging remand, it would in effect negate the purpose of introducing section 167(2) of the Cr.P.C and ensure that the fundamental rights guaranteed to accused persons is violated.

35. Even at the cost of repetition, we find it pertinent to mention that the right of default bail under Section 167(2) of the Cr.P.C is not merely a statutory right, but a fundamental right

that flows from Article 21 of the Constitution of India. The reason for such importance being given to a seemingly insignificant procedural formality is to ensure that no accused person is subject to unfettered and arbitrary power of the state. The process of remand and custody, in their practical manifestations, create a huge disparity of power between the investigating authority and the accused. While there is no doubt in our minds that arrest and remand are extremely crucial for the smooth functioning of the investigation authority for the purpose of attaining justice, however, it is also extremely important to be cognizant of a power imbalance. Therefore, it becomes essential to place certain checks and balances upon the Investigation Agency in order to prevent the harassment of accused persons at their hands."

16. Learned counsel for the petitioner has submitted that the learned Sessions Judge erred in coming to a finding that the investigation has been completed in the case and thereby rejecting the default bail to which the present petitioner was entitled to. It is also submitted that merely because the offence involved in this case is heinous in nature, learned Sessions Judge overlooked explicit mention by the Investigating Officer regarding pendency of

the investigation and came to a conclusion which was contrary to materials available on record which clearly suggest that the charge-sheet was laid without completion of the investigation.

17. Learned counsel for the petitioner has also cited the ruling of Hon'ble Supreme Court of India in “**Satender Kumar Antil Vs. Central Bureau of India**” reported in **2022 10 SCC 51** wherein it was observed as follows:

“Role of the court

93. The rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense. Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice.

94. Criminal courts in general with the trial court in particular are the guardian angels of liberty. Liberty, as embedded in the Code, has to be preserved, protected, and enforced by the

criminal courts. Any conscious failure by the criminal courts would constitute an affront to liberty. It is the pious duty of the criminal court to zealously guard and keep a consistent vision in safeguarding the constitutional values and ethos. A criminal court must uphold the constitutional thrust with responsibility mandated on them by acting akin to a high priest."

18. Learned counsel for the petitioner also cited ruling of Hon'ble Supreme Court of India in "***M. Ravindran Vs. Directorate of Revenue Intelligence***" reported in ***(2021) 2 SCC 485***, wherein it was observed as follows:

"25.2. The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the charge-sheet or a report seeking extension of time by the prosecution before the court; or filing of the charge-sheet during the interregnum when challenge to the rejection of the bail application is pending before a higher court.

25.3. However, where the accused fails to apply

for default bail when the right accrues to him, and subsequently a charge-sheet, additional complaint or a report seeking extension of time is preferred before 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 the investigation, as the case may be, though the accused may still be released on bail under other provisions of the Cr.P.C.”

19. Mr. Y. S. Mannan, learned counsel for the petitioner has also submitted that at the time when the charge sheet is submitted before it, the Court is not expected to minutely appreciate the evidence on record to ascertain as to whether same is sufficient or not so as to come to the finding as to whether the investigation is complete or not. It is further submitted that if it is explicitly mentioned in the charge sheet that the investigation is not complete, the Court accepting the charge sheet should not come to a contrary view to deny the benefit of default bail to the accused. In support of his submission, learned counsel for the petitioner has cited the ruling of Hon’ble Supreme Court of India in “***Central Bureau of Investigation Vs. Kapil Wadhawan and Another***” reported in ***(2023) SCC OnLine Del 3283***, wherein it was observed as follows:

“35. I consider that the order passed by learned Sessions Judge is based on good

reasoning and logic. There is no illegality or perversity in the order of the learned Sessions Judge. I do not find any force in the arguments of learned SPP that once the charge sheet had been filed qua the respondents, the right of the statutory bail could not have been granted to them. The Court is the guardian of the rights bestowed upon the accused persons. Strict compliance of the procedure is necessary to protect the fundamental rights of an individual. Merely, filing of the charge sheet, whether incomplete or piecemeal cannot defeat the basic purpose of Section 167 (2) Cr.P.C. The Court at this stage, also cannot be expected to minutely appreciate the evidence, so as to ascertain whether the same is "sufficient evidence or not". On the face of it, as reflected by the learned senior counsels, a major part of the fraud is yet to be investigated. It is also a settled proposition that in criminal law if two views are possible the Courts should favour an interpretation that safeguards and protects the rights of the accused. The statement of objects and reasons of the Code plays a significant role in guiding its interpretation. Section 167 (2) Cr.P.C. must be interpreted

bearing in mind the three-fold objectives expressed by the legislature namely ensuring a fair trial, expeditious investigation and trial, and establishing a rationalized procedure that protects the interests of the indigent strata of society. These objects essentially serve as components of the overarching fundamental right guaranteed under Article 21 of the Constitution of India."

20. On the other hand, Mr. R. J. Baruah, learned Additional Public Prosecutor has vehemently opposed the prayer for bail by the present petitioner and has submitted that the instant case is a case involving gruesome murder of mother and son duo by the daughter-in-law and her accomplice including the present petitioner. It is submitted by learned Additional Public Prosecutor that this is a case of well planned murder and thereafter the dead bodies were disposed of in a well planned manner so as to dupe the investigating agencies. It is also submitted by the learned Additional Public Prosecutor that there are sufficient materials against the present petitioner and other co-accused for conducting the trial and merely because the FSL Report was not received before filing of the charge sheet, same may not be regarded as a case of incomplete investigation. Learned Additional Public Prosecutor has strongly submitted that in spite of the fact that the investigating officer has mentioned that the charge sheet to be a

part charge sheet, under the facts and circumstances of the case, same may not be regarded as a part charge sheet, as charges are framed against the accused persons and trial has commenced and 13 (thirteen) independent witnesses have already been examined. Learned Additional Public Prosecutor has submitted that the investigating authority has statutory mandate of conducting further investigation as and when so required depending on the facts of the case. It is submitted that in the instant case merely because forensic report is yet to be collected, same may not be regarded as incomplete investigation and the Investigating Officer has every right to submit the same as an additional document under section 173 (8) of the Code of Criminal Procedure, 1973. Learned Additional Public Prosecutor has also submitted that the question as to whether the investigation is complete or not is essentially a question of fact and the test is as to whether as per investigating agency sufficient materials are available on record for prosecution of the accused persons or not, though further investigation may be necessary on certain vital points. In support of his contention, learned Additional Public Prosecutor has cited the ruling of Hon'ble Supreme Court of India in “**Dinesh Dalmia Vs. CBI**” reported in **(2007) 8 SCC 770**, wherein it was observed as follows:

“24. Concededly, the investigating agency is required to complete investigation within a reasonable time. The ideal period there for would be 24 hours, but, in some cases, it may

not be practically possible to do so. Parliament, therefore, thought it fit that remand of the accused can be sought for in the event investigation is not completed within 60 or 90 days, as the case may be. But, if the same is not done within the stipulated period, the same would not be detrimental to the accused and, thus, he, on the expiry thereof would be entitled to apply for bail, subject to fulfilling the conditions prescribed there for.

25. Such a right of bail although is a valuable right but the same is a conditional one; the condition precedent being pendency of the investigation. Whether an investigation in fact has remained pending and the investigating officer has submitted the charge-sheet only with a view to curtail the right of the accused would essentially be a question of fact. Such a question strictly does not arise in this case inasmuch as, according to CBI, sufficient materials are already available for prosecution of the appellant. According to it, further investigation would be inter alia necessary on certain vital points including end use of the funds.

38. It is a well-settled principle of interpretation of statute that it is to be read in its entirety. Construction of a statute should be made in a manner so as to give effect to all the provisions thereof. Remand of an accused is contemplated by Parliament at two stages; pre-cognizance and post-cognizance. Even in the same case, depending upon the nature of charge-sheet filed by the investigating officer in terms of Section 173 of the Code, a cognizance may be taken as against the person against whom an offence is said to have been made out and against whom no such offence has been made out even when investigation is pending. So long a charge-sheet is not filed within the meaning of sub-section (2) of Section 173 of the Code, investigation remains pending. It, however, does not preclude an investigating officer, as noticed hereinbefore, to carry on further investigation despite filing of a police report, in terms of sub-section (8) of Section 173 of the Code.

39. The statutory scheme does not lead to a conclusion in regard to an investigation leading to filing of final form under sub-section (2) of Section 173 and further investigation

contemplated under sub-section (8) thereof. Whereas only when a charge-sheet is not filed and investigation is kept pending, benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to an offender; once, however, a charge-sheet is filed, the said right ceases. Such a right does not revive only because a further investigation remains pending within the meaning of sub-section (8) of Section 173 of the Code."

21. Learned Additional Public Prosecutor has also submitted that even after examination of witnesses during the course of trial the prosecution side may submit supplementary charge sheet and may adduce additional evidence on the basis of materials collected during further investigation. In support of his contention, learned Additional Public Prosecutor has cited a ruling of Hon'ble Supreme Court of India in "***Rama Chaudhury Vs. State of Bihar***" reported in **(2009) 6 SCC 346**, wherein it was observed as follows:

"21. It is true that after the enquiry and investigation, charges were framed on 11-3-2004 and thereafter in the course of the trial about 21 witnesses were examined. In the meantime, the police submitted supplementary charge-sheet with certain new materials and on the basis of supplementary charge-sheet, the

prosecution filed an application on 12-1-2008 in the pending Sessions Trial No. 63 of 2004 before the trial court for summoning the persons named in the charge-sheet for their examination as prosecution witnesses. On a careful perusal of the application, the trial court by an order dated 19-2-2008, allowed the same and has summoned those witnesses named in the supplementary charge-sheet.

22. The law does not mandate taking prior permission from the Magistrate for further investigation. It is settled law that carrying out further investigation even after filing of the charge-sheet is a statutory right of the police (vide K. Chandrasekhar v. State of Kerala [(1998) 5 SCC 223 : 1998 SCC (Cri) 1291]. The material collected in further investigation cannot be rejected only because it has been filed at the stage of the trial. The facts and circumstances show that the trial court is fully justified to summon witnesses examined in the course of further investigation. It is also clear from Section 231 CrPC that the prosecution is entitled to produce any person as witness even though such person is not named

in the earlier charge-sheet."

22. Learned Additional Public Prosecutor has further submitted that in the instant case the charge sheet was laid on the 84th day of the detention of the present petitioner i.e., much prior to lapse of the statutory limit of 90 days. It is also submitted by the learned Additional Public Prosecutor that had the intention of the Investigating Officer in submitting the charge sheet been only to defeat the right of default bail of the petitioner, he would have waited till the 90th day for submitting the charge sheet, however, as same was not the intention the charge sheet was laid much earlier than the statutory dead line. It is further submitted by the learned Additional Public Prosecutor that in the instant case the Investigating Officer has categorically stated in the charge sheet that as from the materials collected during the course of investigation, clear cut case under Section 302/201/34 of the Indian Penal Code is made out against the accused person including the present petitioner, the charge sheet was laid before the learned Elaka Magistrate on 15.05.2023. Learned Additional Public Prosecutor has submitted that if the present petitioner is released on bail at this stage, there is every possibility of his tampering with the evidence and influencing the witnesses and it will also send a wrong message to the society. On the aforesaid ground, the learned Additional Public Prosecutor has vehemently opposed grant of bail to the present petitioner.

23. I have considered the rival submissions made by learned counsel for both the sides and have perused the material on record including the scanned

copies of the case record of Sessions Case No. 91/2023 and connected files.

24. The present petitioner was arrested on 20.02.2023 and he has been detained behind the bar since last 233 days. It also appears from record that trial has already been commenced and 13 (thirteen) numbers of witnesses have already been examined by the prosecution side. It also appears that on the 84th day of the arrest of the present petitioner, i.e., on 15.05.2023, the charge sheet was laid, before the Magistrate by the Investigating Officer through the Officer-In-charge of Noonmati Police Station, against the present petitioner, stating therein that the said charge sheet may be treated as part charge sheet and supplementary/additional charge sheet shall be filed under Section 173 (8) of the Code of Criminal Procedure, 1973 in due course of time. On the ground of submission of the charge sheet without completion of the investigation, the present petitioner had prayed for default bail under Section 167 (2) of the Code of Criminal Procedure, 1973 and on 07.06.2023 the Court of learned Sessions Judge, Kamrup (Metro) rejected the said prayer holding that the investigation was completed before submission of charge-sheet and only collection of FSL report was pending at the time of submission of charge sheet.

25. Under Section 173 (2) of the Code of Criminal Procedure, 1973 the Officer-In-Charge of the Police Station has to forward the police report in the form prescribed by the State Government, i.e., the charge sheet or the final report as soon as the investigation is completed. Though, the Code of Criminal Procedure, 1973 does not prescribe a time limit for completion of investigation

in a case which relates to an offence punishable with death, imprisonment for life or for imprisonment for a term of not less than ten years, however, if the said investigation could not be completed within a period of 90 days from the date on which the accused person has been forwarded to the Magistrate, if he is arrested and detained in custody, no Magistrate shall authorise the detention of such an accused on expiry of said period of ninety days and the said accused shall be released on bail, if he is prepared and does furnish bail. This is the mandate of Section 167 (2) of the Code of Criminal Procedure, 1973.

26. We have seen herein above that Section 173 (2) of the Code of Criminal Procedure, 1973 in unambiguous terms provides that the charge sheet has to be submitted "as soon as the investigation is completed", which means before completion of investigation charge sheet cannot be submitted. We have seen herein above that Hon'ble Apex Court has observed in "***Ritu Chhabaria***" (***Supra***) that first investigation is to be completed and only then can a charge sheet be filed and failure to submit the charge sheet within stipulated period would trigger the statutory right of default bail to the accused under Section 167 (2) of the Code of Criminal Procedure, 1973. The right of default bail under Section 167 (2) of the Code of Criminal Procedure, 1973 was held to be an indefeasible right of the accused. We have also seen that in "***M. Ravindran***" (***Supra***), Hon'ble Apex Court has observed that the right to be released on default bail continues to remain enforceable if the accused has applied for such bail when the right accrues to him, notwithstanding subsequent filing of charge sheet. We also

have seen that in “***Dinesh Dalmia***” (*Supra*), Hon’ble Apex Court has observed that the question as to whether the investigation has remained pending on the date of submission of the charge sheet and the investigating officer has submitted the charge sheet only with a view to curtail the right of accused would essentially a question of fact. Thus, the question as to whether in a particular case charge sheet has been submitted without completion of the investigation only to curtail the right of default bail of the accused person is to be ascertained considering the facts and circumstances of that particular case.

27. In the instant case, the charge sheet in question has been signed by the Investigating Officer and the Officer-In-Charge of Noonmati Police Station on 12.05.2003 and same was dispatched on 13.05.2023 and it was laid before the Magistrate on 15.05.2023. The charge sheet was thus laid on the 84th day of arrest of the present petitioner (who was arrested on 20.02.2023). The 90th day from the date of his arrest was on 21.05.2023. Hence, we have to see as to whether the charge sheet which was laid on the 84th day of the arrest of the present petitioner was submitted after completion of the investigation and if not, whether on expiry of 90th day of the arrest of present petitioner, i.e., on 21.05.2023 the investigation was completed or not.

28. Though there is no question as regards right of the Investigating Officer to preclude him from further investigation under Section 173 (8) of the Code of Criminal Procedure, 1973 as same is as statutory right. However, to consider the

question as to whether statutory right of default bail has accrued to an accused, it is to be seen as to whether on the date of submission of the charge sheet, the investigation was completed or it was submitted without completing the same.

29. Now the question is as to how to find out whether the investigation has been completed or not on the date of submission of charge sheet. In my considered opinion, one of the ways to ascertain the same is from the explicit language used in the charge sheet by the Investigating Officer and the Officer-In-Charge of the Police Station at the time of submission of charge sheet. If it is explicitly stated in the charge sheet that the investigation is still pending, the right of default bail accrues to the detained accused on expiry of the 90th day of his detention if the investigation is not completed by that time.

30. It is also to be noted that in the State of Assam by virtue of the Circular No.1 of 2015 dated 17.01.2015, issued by Director General of Police, Assam Police, all the Final Reports in Sessions Cases have to be scrutinised by the Superintendent of Police who should make an endorsement on the Final Report that the investigation is proper and correct before the same is forwarded to the Court. It is also mandated therein that Senior Police Officers including the Superintendent of Police shall supervise investigation of cases under Section 36 of the Code of Criminal Procedure, 1973. Hence, the endorsement made in the charge sheet in the instant case has to be treated as having been made after supervision by the Senior Police Officers including the Superintendent of Police.

31. If we peruse the charge sheet which was laid in the instant case on

15.05.2023, it appears that following observations have been made in the last two paragraphs of the said charge sheet :-

“From the materials collected this far during the course of investigation, clear cut offences u/s 302/201/34 IPC are made out against accused 1.Bandana Kalita, d/o Kamini Kalita, of Sonali Path, Bonda, Panikhaity Out Post, PS: Pragjyotishpur, Kamrup(M), Assam / H.No 11, Amarawati Apartment, Mother-Teresa Road, Narengi, Ps: Noonmati, Kamrup(M) 2, Dhanti Deka, C/O Ramesh Deka of Sashanbasti, Narengi, Kenduguri, PS: Noonmati, Dist: Kamrup(M), Assam, Ph No. 7002052645/6909167892 and 3. Arup Deka, C/O Kailash Deka of House No 57, Uday Nagar, Koinadhara, Dispur, Ward No. 29, Near Shiv Mandir And Ferry Land High School, Checkgate, PS: Basistha Guwahati, Kamrup(M) Assam 781022 and Charge sheet under the said sections(302/201/34 IPC) is accordingly laid against all the three accused. It is prayed that cognizance of offences u/s 302/201/34 IPC may kindly be taken against all the three accused and they may try accordingly. It may also be humbly stated herein that further investigation in the case is still underway. So the charge sheet submitted now may be treated as a part charge sheet and supplementary/additional charge sheet u/s 173(8) CrPC will be submitted in due

course of time.

It is also humbly stated that the offences committed by the accused are heinous in nature and the nature of the accusation is such that if convicted, they (accused) may be handed out death sentence/life imprisonment. There are also chances that in the event of bail being granted, the accused may try and influence the witnesses and hamper/tamper with the evidence gathering process since investigation is still underway. As such, in view of the Apex Court directives in the case of CBI V/s Amarmani Tripathi (Appeal CrI No 1248/2005) and other related Apex Court judgments related to the factors to be considered while granting bail in heinous offences; bail prayer (if any) preferred by the accused may kindly be rejected."

32. A bare reading of the above paragraphs would indicate that the Investigating Officer has minced no words in the charge sheet to indicate that the investigation was still undergoing on the date of submission of the charge sheet before the Court, and evidence gathering process was still going on, which means that the investigation was not completed on the date when the charge sheet was laid. Though, it also appears that the Investigating Officer has also mentioned in above paragraphs that "from the materials collected this far during the course of investigation, clear cut offences u/s 302/201/34 IPC are

made out against the accused persons” however, he has categorically stated thereafter, that the charge sheet may be treated as a part charge sheet, which only indicates that investigation was not complete on 12.05.2023 when it was signed by the Investigating Officer and the Officer-In-Charge of Noonmati Police Station.

33. The availability of incriminating materials against the accused persons in an investigation of criminal case may be there from the early stage of investigation, however, it is the prerogative of the Investigating Officer and the Supervising Police Officers (*in the instant case Officer of the rank of Superintendent of Police*) to come to a decision as to when to conclude the investigation after ensuring sufficiency of evidence collected during the course of investigation against the accused who is found to be involved in the commission of the alleged offence so as to entail a conviction of such accused in the trial. In the instant case, the Investigating Officer has nowhere stated that he has only to collect FSL Report, rather he was hopeful of getting more evidence and therefore, he has categorically stated in the charge sheet that evidence gathering process is still going on and he apprehended that enlarging the petitioners on bail would hamper the evidence gathering process. Thus, it is clear that the Investigating Officer has clearly indicated that the investigation was not complete on 12.05.2023 i.e., on the day when the charge sheet was laid. It also appears that the present petitioner completed 90th day of detention behind the bar on 21.05.2023 and by that date also nothing was submitted by

the Investigating Officer to show that the investigation has been completed.

34. For the above mentioned reasons, I am constrained to hold that the charge sheet in Noonmati P. S. Case No. 480/2022 was submitted on 12.05.2023 without completion of investigation. The present petitioner is, therefore, entitled to default bail under Section 167 (2) of the Code of Criminal Procedure, 1973 in the light of rulings of Apex Court discussed herein above. As in the instant case trial has already commenced after framing of charges against the present petitioner and as the case involves allegation regarding planned murder of mother and son duo, this Court proposes to impose strict bail conditions on the present petitioner.

35. For reasons mentioned herein before, the petitioner Shri Arup Deka is hereby directed to be released on bail of Rs. 50,000/- (Rupees Fifty Thousand only) with two sureties of like amount subject to the satisfaction of the learned Trial Court with following conditions:

- 1) The petitioner, namely, Shri Arup Deka shall regularly appear before the Trial Court without fail in the trial of Sessions Case no. 91/2023 as and when so directed by the Trial Court.
- 2) After his release on bail, the petitioner shall appear before the Officer-In-Charge of Noonmati Police Station on the date of his release itself and thereafter twice in every week till the pendency of trial. The Officer-In-Charge of Noonmati Police Station shall maintain an attendance register of the present petitioner in this regard.

- 3) The petitioner shall provide his biometrics details to the Officer-In-Charge of Noonmati Police Station on the date of his release on bail and shall also provide information about his place of residence, contact details and shall inform about change of his address and contact details, if any, from time to time to the Officer-In-Charge of Noonmati Police Station as well as to the Trial Court.
- 4) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person who may be acquainted with the fact of the case so as to dissuade such persons to disclose such facts to the Police or to the Trial Court.
- 5) The petitioner shall not leave the jurisdiction of the Trial Court without prior permission of the Trial Court and after intimation to the Officer-In-Charge of Noonmati Police Station.
- 6) The Trial Court may alter, modify or add to any of the above conditions at any time during trial as may be deemed fit and proper by it.
- 7) Any violation of any of the above condition would be a good ground for cancellation of bail of the present petitioner and in such an event learned Trial Court may cancel the bail on the prayer of prosecution side after hearing both the sides and this Court need not to be approached for the said purpose.

36. It is hereby made clear that no opinion has been expressed by me

regarding the merit of the main case in this order and any observations made by me while granting bail to the present petitioner would not in any manner influence the Trial Court during the conduct of trial of Sessions Case No. 91/2023.

37. With above observation, this bail application is disposed of.

38. Registry to send a copy of this order to the Trial Court as well as to the Officer-In-Charge of Noonmati Police Station.

JUDGE

Comparing Assistant