

GAHC010156672023



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

Case No : Crl.Pet./999/2023

JIAUR RAHMAN @ JIAUR RAHMAN
S/O ALAUDDIN
R/O VILL- TELITIKAR PART-II
P.O. RAJARTILLA
P.S. KATHIGORAH
DIST. CACHAR
ASSAM

VERSUS

THE UNION OF INDIA
TO BE REP. BY THE STANDING COUNSEL
CUSTOMS DEPARTMENT.

Advocate for : MR. M A CHOUDHURY
Advocate for : SC
CUSTOMS appearing for THE UNION OF INDIA
WITH **Case No. : Bail Appln./2491/2023**

JIAUR RAHMAN @ JIAUR RAHMAN
S/O ALA UDDIN
R/O VILL- TELITIKAR PART-II
P.O. RAJARTILLA,
PS. KATHIGORAH
DIST. CACHAR, ASSAM

VERSUS

THE UNION OF INDIA
TO BE REP. BY THE STANDING COUNSEL, CUSTOMS
DEPARTMENT.

Advocate for the Petitioner : MR. M A CHOUDHURY

Advocate for the Respondent : SC, CUSTOMS

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

30.11.2023

1. Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Mr. S. C. Keyal, learned Standing Counsel appearing on behalf of Customs, Union of India.
2. This criminal petition is filed under Section 482 of the Cr.P.C., 1973 for quashing of an order dated 12.06.2023 passed by the learned Special Judge, Karimganj in Special (NDPS) Case No. 01/2023 arising out of Departmental Case No. 02/CL/NDPS/AS/KXJ/2022-23 dated 28.12.2022 registered under Sections 22(C)/29/60 of the NDPS Act, 1985, whereby extension for filing offence report was granted to the prosecution.
3. The bail application is filed under Section 439 of Cr.P.C. by the same petitioner, namely, **Shri Jiaur Rahman @ Jiaur Rahman**, in connection with same case i.e. Special (NDPS) Case No. 01/2023 arising out of Departmental Case No. 02/CL/NDPS/AS/KXJ/2022-23 dated 28.12.2022 registered under Sections 22(C)/29/60 of the NDPS Act, 1985, on the

ground that the investigating authority has failed to file offence report in terms of Section 36A(4) of the NDPS Act, 1985.

4. The petitioner herein was arrested on 28.12.2022 by the Custom Authority in connection with aforesaid Departmental case. In terms of the quantity and nature of contraband and by virtue of mandate of Section 34A(4) of the NDPS Act, 1985, in the given facts of the present case, the investigating authority was to complete the investigation within a period of 180 days. However, admittedly, such investigation was not completed within the aforesaid period and the petitioner was in custody during the aforesaid period. However, the Custom Authority on 12.06.2023, made a written prayer before the learned trial Court below through the learned Special Public Prosecutor, seeking extension of time for submission of the Final Complaint in connection with the NDPS case. On the basis of such written prayer, the learned trial Court below under its order dated 12.06.2023 impugned in the connected Criminal Petition, allowed the extension of time for one month.
5. The basic grievance of the petitioner is that while allowing such extension of time, the learned trial Court below has not heard the petitioner or issued notice to him regarding such factum of seeking extension of time by the investigating authority. According to Mr. Ahmed, learned counsel, that being the position, the extension order itself is bad in the eye of law, and therefore, same is liable to be set aside and the petitioner is entitled to be granted default bail in terms of Section 36A(4) of the NDPS Act, 1985.
6. Per contra, Mr. S. C. Keyal, learned Standing Counsel for the Customs submits that though there is no reflection on the record that no notice was

given to the petitioner, however, on a reading of the order dated 12.06.2023, it is clear that accused/petitioner was produced from jail through video conferencing and therefore, the petitioner was well aware of the factum of seeking extension of time and the learned trial Court below has passed the order considering the necessity and the reasons as explained in the written prayer. Therefore, only on the technical ground that no specific notice was issued to the petitioner, the said extension order cannot be interfered with inasmuch as in the meantime, the authority has submitted their Final Form during the period of extended time and there are sufficient materials in this regard.

7. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the materials available on record.
8. It is no more res integra that it is mandatory to produce the accused at the time, when the Court considers the application for extension of the period of investigation and also that accused must be informed that the question of extension of the period of investigation is being considered inasmuch as the accused shall have a right to raise objection to any such application for extension. Such determination has been made and ratio has been laid down by the Hon'ble Apex Court in the case of **Sanjay Dutta – Vs- State of Maharashtra** reported in **1994 5 SCC 410**.
9. It is well settled that the investigating authority has been mandated to complete their investigation in terms of Section 36A(4) of the NDPS Act, 1985 within a specific time frame with a proviso that such extension of time can be granted if the learned trial Court is satisfied that extension is

required. If such investigation is not completed within the mandated period prior to extension, the petitioner/accused shall have a right to get released on default bail which, in the considered opinion of this Court, is a valuable right. Therefore, to negate such valuable rights, the accused/petitioner should be put into notice that his right is sought to be curtailed for certain reason so that he can make his explanation and according to this Court, procedure established under law should be scrupulously followed to deprive of a person from his valuable right guaranteed under Article 21 of the Constitution of India.

10. In the case in hand, if we go through the order dated 12.06.2023, the following facts are discernible:-
 - I. The accused was produced from jail hazot through video conferencing.
 - II. A written prayer was submitted by the learned Special Public Prosecutor showing the ground to pass necessary order for extending the time for submission of report.
11. On the basis of aforesaid facts, the finding of the learned trial Court below is that considering the gravity of the offence, the prayer for extension of period is allowed, however, it is clear from the aforesaid order that the accused was not put on notice or even was not told verbally that a prayer for extension of period for filing report has been made and that he has a right to object to such application.
12. That being the position, in the considered opinion of this Court, the due procedure established under law to take away the right of the petitioner

under Article 21 of the Constitution of India arising out of mandate of Section 36 A(4) of the NDPS Act, 1985 is violated and that being so, the impugned order dated 12.06.2023 passed by the learned Court below is not sustainable. Accordingly, same is set aside and quashed.

13. In view of the aforesaid findings, this Court is of the further opinion that the petitioner is entitled for default bail in terms of Section 36 A (4) of the NDPS Act, 1985, inasmuch as admittedly the Final Form was not filed within the specific period of time as mandated under law and as discussed hereinabove.
14. Accordingly, the petitioner namely **Shri Jiaur Rahman @ Jiaur Rahman**, be released on bail on executing a bail bond of Rs. 1,00,000/- (One lakh) with two suitable solvent sureties of like amount to the satisfaction of the learned Special Judge, Karimganj, Assam in connection with aforementioned case. The bail granted to the petitioner shall be subject to following conditions:-
 - (a) The petitioner shall not leave the territorial jurisdiction of learned Special Judge, Karimganj, Assam, without prior written permission from him;
 - (b) The petitioner shall not hamper and tamper with the evidence of the case;
 - (c) 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 officer.

- (d) The petitioner shall surrender his passport, if any (if not already surrendered) before the learned Special Judge, Karimganj, Assam.
- (e) The petitioner shall not try to contact any of the witnesses by any mode including telephone, social media etc.
- (f) The petitioner shall furnish the present residential address with proof to the Investigating Officer as well as to the learned trial Court below and shall not change the said residence without prior permission of the learned trial Court.
- (g) The petitioner shall appear before the Officer-in-Charge, Kathigorah Police Station on the 1st day of every week.
- (h) The petitioner shall appear before the learned trial Court below on each and every date of appearance during trial.
- (i) The petitioner shall not indulge in any of such activities in future related to similar offence,
- (j) In the event, if any of the conditions as mentioned above is violated by the petitioner, the bail granted to the petitioner, shall be liable to be cancelled.

In the aforesaid terms, this bail petition is allowed.

Accordingly, both the petitions being CrI. Petition No. 999/2023 and Bail Appln. No./2491/2023 are disposed of.

JUDGE