

GAHC010220312023



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

Case No. : Bail Appln./3471/2023

RIYAJUL ISLAM
S/O. LT. AHUD ALI, R/O. VILL. NO. 1 AHMEDPUR, P.S. BIHPURIA, DIST.-
LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP, ASSAM

Advocate for the Petitioner : MR N HASAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 22.11.2023

- 1.** Heard Mr. N. Hasan, learned counsel for the petitioner. Also heard Mr. M. Haloi, learned Special Public Prosecutor for CBI.
- 2.** This application under Section 439 of the Code of Criminal Procedure, 1973 read with Section 167(2) of the said Code has been filed by the petitioner, namely, *Riyajul Islam* who has been detained behind the bar since 26.05.2023 (since last 180 days) in connection with PRC Case No. 1626/2023 corresponding

to G.R. Case No. 469/2023 arising out of North Lakhimpur P.S. Case No. 183/2023 under Sections 120(B)/395/397/342/387 of the Indian Penal Code.

3. The gist of accusation in this case is that on 12.5.2023 one Mustt. Amina Khatun had lodged an FIR before the Officer-in-Charge of Lakhimpur Police Station, *inter alia*, alleging that on 06.05.2023, at around 2:00 a.m. at night, some miscreants with the assistance of accused No. 1 named in the FIR, namely, Junmoni Rabha (since deceased) had enter into the resident of the informant and subjected the son of the informant, namely, Md. Ajgor Ali to physical torture and forcibly took away Rs.80,000/- along with the purse, voter ID card, PAN card and golden rings from the wife of Md Ajgor Ali. It is also alleged in the FIR that the informant was also physically assaulted and the house of the informant was rampaged and thereafter the accused persons named in the FIR (*total 8 nos. of accused persons are named in the FIR*) took away the Maruti Brezza of elder son of the informant and instructed the informant to go Arunachal bypass situated at Gohpur in the next morning along with Rs. 6,00,000/- (Rupees Six Lakhs). It is alleged in the FIR that thereafter the informant arranged Rs. 6,00,000/- (Rupees Six Lakhs) by mortgaging her own vehicle and handed over to the same to the accused persons and only after payment of the said amount, the son of the informant was released. It has been further alleged in the FIR that out of the total amount of Rs. 6,00,000/- (Rupees Six Lakhs), the petitioner was paid Rs.90,000/- through UPI payment mode and remaining amount was paid in cash to the accused No. 1, namely, Junmoni Rabha.

4. After lodging of the said FIR, North Lakhimpur P.S. Case No. 183/2023 was registered and the present petitioner was arrested in connection with the said case on 26.05.2023. Initially, the case was investigated by the CID, Assam,

subsequently, the investigation of the said case was transferred to CBI and accordingly RC No. 0502023S0003 dated 14.06.2023 was registered and the investigation was taken up by the CBI. Thereafter, on 19.08.2023, the Investigating Officer laid the charge-sheet before the Chief Judicial Magistrate, North Lakhimpur bearing charge-sheet No. 9/2023 under Sections 120B/342/388/395 of the Indian Penal Code against four nos. of accused persons including the present petitioner. The other accused persons against whom the charge-sheet was laid were Nur Mohammad @ Kalia @ Roy, Ajijur Rahman @ Aji @ Ajimuddin and Mozibur Rahman.

5. It is submitted by learned counsel for the petitioner that though the charge-sheet was laid on 19.08.2023 by the Investigating Officer of CBI, however, in clause No.16.16 of the charge-sheet, it was mentioned that further investigation in the case has been kept open to unearth larger conspiracy and role of co accused persons namely,(i) Mustak Ahmed, (ii) Muktar Hussain, (iii) Najrul Islam and (iv) Dildar Hussain and others, if any. It is further submitted by learned counsel for the petitioner that the learned Chief Judicial Magistrate, North Lakhimpur on receipt of the aforesaid charge-sheet took cognizance of offence under Section 120B/342/388/395 of the Indian Penal Code against the four accused persons named in the charge-sheet.

6. Learned counsel for the petitioner has submitted that the charge-sheet in the present case i.e., 0502023S0003 dated 14.06.2023 has been laid without completing the investigation as required under Section 173(2) of the Code of Criminal Procedure, 1973. Learned counsel for the petitioner has submitted that the categorical statement made by Investigating Officer in clause 16.16 of the charge-sheet wherein he has stated that further investigation has been kept open to unearth the larger conspiracy and the role of co accused, itself shows

that the charge-sheet was laid without completion of the investigation in the case, and, therefore, it is submitted by learned counsel for the petitioner that the petitioner is entitled to be released on bail under section 167(2) of the Code of Criminal Procedure, 1973 as within the stipulated period of 90 days the Investigating Officer has failed to lay the charge-sheet after completion of the investigation.

7. It is further submitted by learned counsel for the petitioner that in the instant case, the charge-sheet was laid without completing the investigation only to defeat the statutory right of the bail of the present petitioner. It is further submitted by learned counsel for the petitioner that on 02.09.2023, the petitioner had filed an application before the learned Chief Judicial Magistrate, North Lakhimpur praying for allowing the petitioner to go on default bail, however, the said prayer was rejected by the learned Chief Judicial Magistrate, North Lakhimpur on the ground that the charge-sheet has been laid in the instant case after completion of the investigation.

8. Learned counsel for the petitioner has further submitted that thereafter on 12.09.2023 when the case was taken up for consideration by the Court of learned Chief Judicial Magistrate, North Lakhimpur, the Investigating Officer of the case had filed a written prayer before the Court for allowing the Investigating Officer to continue the further investigation in the case to unearth the larger conspiracy and to investigate the role of other co-accused persons, if any and the Court of learned Chief Judicial Magistrate, North Lakhimpur allowed the said prayer and granted time till 03.10.2023 to the Investigating Officer to submit the final form in the case. On 03.10.2023, the Investigating Officer submitted a written prayer before the Court of learned Chief Judicial Magistrate, North Lakhimpur to continue the further investigation and the said

prayer was allowed and time was granted till 03.11.2023 for submission of final form. It is further submitted by learned counsel for the petitioner that thereafter again on 03.11.2023, a similar prayer has been made by the Investigating Officer and a similar order was passed by the learned Chief Judicial Magistrate, North Lakhimpur granting further time to complete further investigation and to submit final form and the next date for submission of final form has been fixed on 12.12.2023.

9. Learned counsel for the petitioner has submitted that mere filing of a report under Section 173(2) of the Code of Criminal Procedure, 1973 would not defeat the statutory right of the petitioner to be enlarged on bail if the said report is not submitted after completion of the investigation, if the said report is submitted without completing the investigation.

10. It is submitted by the learned counsel for the petitioner that first the investigation has to be completed only then a charge-sheet or a report under Section 173(2) of the Code of Criminal Procedure, 1973 has to be filed within the stipulated period of time and failure to do so would trigger the statutory right of default bail under Section 167(2) of the Code of Criminal Procedure, 1973.

11. In support of this submission, learned counsel for the petitioner has cited the ruling of Hon'ble Apex Court in "***Ritu Chhabaria Vs. Union of India & Ors.***" reported in "**2023 SCC Online SC 502**" wherein it was observed by Hon'ble Apex Court that first investigation is to be completed and only when 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 the Code of Criminal Procedure, 1973. It was also observed therein that if it is to be held that charge-sheet can be filed without completing the investigation,

and same can be used for prolonging remand, it would in effect negate the purpose of introducing Section 167(2) of the Code of Criminal Procedure, 1973 and ensure that the fundamental rights guaranteed to the accused persons is violated.

12. Learned counsel for the petitioner has also cited a ruling of the *High Court of Madhya Pradesh Vs. Hargovind Bhargava and another Vs. State of M.P. and another* reported in *"2016 0 Supreme (MP) 269"*, wherein it has been observed as follows:-

"13. When the provisions of Section 173(2) and 173(8) of Cr.P.C. simply empowers to file final report and to file supplementary report then no right is accrued to the Investigating Officer to keep the investigation pending against a particular accused. It is not permissible for the Investigating Officer to file a charge-sheet against few accused persons on believing the evidence of some eye-witnesses or other witnesses by believing them and to keep the investigation pending against the other accused persons with the pretext that the testimony of such witnesses is yet to be examined for remaining accused persons. The Investigating Officer cannot be permitted to create any impossible situation before the Court. If a crime is registered and investigation is started then it should be completed within a particular span of time.

14- The Investigating Officer cannot be permitted to keep the investigation pending for some accused and to

file the charge-sheet against the arrested accused to defeat the provisions of [Section 167\(2\)](#) of Cr.P.C. so that bail should not be granted due to incomplete investigation to the persons who were arrested by the Investigating Officer. But such procedure is commonly practiced in our State by a few Investigating Officers that they keep the investigation pending for some of the accused as a right in the light of the provisions of [Section 173](#) (8) of [Cr.P.C.](#) However due to such procedure the Sessions

Court starts trial against few accused persons and in the meantime supplementary charge-sheet is filed by adding one or two accused and thereafter re-trial starts if previous trial is not completed and again a piecemeal charge-sheet is filed against remaining accused persons resulting in a retrial or a fresh trial. Such activities of police create multiplicity of trial against the accused persons who were arrested earlier.”

13. Further, to substantiate his argument, learned counsel for the petitioner has also cited the ruling of the “**High Court of Delhi in Central Bureau of Investigation Vs. Kapil Wadhawan & Anr.**” reported in “**(2023) SCC Online Delhi 3283**”, wherein it has been observed as follows:-

“35. It is pertinent to mention here that neither of the parties have discussed the merits of the case. It is also important to mention that the learned ASJ has passed a detailed and reasoned order inter alia holding that the

charge sheet so filed was incomplete. I consider that there is no ground to interfere with or alter this opinion. It is a settled proposition that it is the jurisdiction of the Magistrate/learned Special Judge alone to decide that whether the material placed by the prosecution along with the report (charge sheet) was having sufficient evidence or not. Since the learned Special Judge has recorded a reasoned and conscious view that the charge sheet so filed on the face of it was incomplete, therefore this Court finds it difficult to interfere with the same. It is also pertinent to mention that though the cognizance has been taken in this case, which to the mind of this Court will not make any difference, in view of the fact that the charge sheet itself has been held to be incomplete. But it is imperative to mention that despite repeated directions of expeditious disposal of default bail applications by the superior Courts, in the present case, the application for default bail was filed before the learned Special Judge on 29.10.2022 and was decided on 03.12.2022. The cognizance was taken during the interregnum period. This Court is of the considered opinion that the charge sheet filed by the CBI in the present case is an incomplete/piecemeal charge sheet and terming the same as a final report under [section 173 \(2\) Cr.P.C.](#) merely to ruse the statutory and fundamental right of default bail to the accused shall negate the provision under Section 167

Cr. PC and will also be against the mandate of [Article 21](#) of the Constitution of India.”

14. Learned counsel for the petitioner has also relied upon the judgment of this Court passed in “**Arup Dea Vs. State of Assam**” (order dated 11.10.2023 in Bail Application No. 2258/2023), wherein, it was observed as follows:-

“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, not withstanding 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."

15. On the other hand, Mr. M. Haloi, learned Special Public Prosecutor, Central Bureau of Investigation has submitted that in the instant case the charge-sheet was laid within stipulated period of time after completion of the investigation against the present petitioner and three other co-accused against whom charge-sheet has been laid.

16. It is submitted that mere mention in the charge-sheet in column No. 16.16 therein, that the further investigation has been kept open to unearth larger conspiracy and the role of co-accused persons would not indicate that the charge-sheet has been laid without completion of the investigation as after receipt of the charge-sheet, learned Chief Judicial Magistrate, North Lakhimpur has also taken cognizance of the offence under Sections 120B/342/388/395 of the Indian Penal Code against the present petitioner and three other accused persons named in the charge-sheet by order dated 24.08.2023.

17. It is further submitted by learned Special Public Prosecutor that the order of taking cognizance by the learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur has not been challenged by the present petitioner and under that circumstances it would not be correct to say that the charge-sheet has been laid without completion of the investigation.

18. Learned Special Public Prosecutor has further submitted that the right to conduct further investigation in a case is a statutory right of the Investigating Agency and even if same is not mentioned in the charge-sheet that right cannot

be curtailed and similarly mere mentioning of the fact that the further investigation would be carried out in a given case would not, in itself, make the investigation incomplete, if otherwise sufficient materials are available for prosecution of the accused persons who are named in the charge-sheet at the time of laying of the charge-sheet. Learned Special Public Prosecutor, CBI has submitted that once charge-sheet has been laid with all the documents on which the prosecution proposes to rely, the investigation shall be deemed to have been completed and in support of his submission, learned Special Public Prosecutor has cited a judgment the High Court of Delhi High Court in "***Sanjay Kumar Pundeer –Vs- State of NCT of Delhi***" (order dated 15.09.2023 in Bail Application No. 2698/2023).

19. Learned Special Public Prosecutor has also relied upon the ruling of Hon'ble Apex Court in "***Dinesh Dalmia Vs. CBI***" reported in "***(2007)8 SCC 770***", in support of his submission that only because of the fact that the further investigation is pending would not make the investigation incomplete if a chargesheet has been filed and otherwise sufficient materials are available for prosecution of the accused persons who are named in the charge-sheet. In support of his submission learned Special Public Prosecutor has also cited the ruling of the "***High Court of Madhya Pradesh Vs. Hargovind Bhargava and another Vs. CBI***" reported in "***(2007)8 SCC 770***".

20. Learned Special Public Prosecutor, CBI has also submitted that, in the meanwhile, the further investigation to unearth the larger conspiracy is being carried out and has opposed the grant of bail to the present petitioner on the ground of seriousness of the offence involved as well as on the ground that enlarging the present petitioner on bail at this stage would hamper the further investigation.

21. I have considered the rival submissions made by learned counsel for both sides and have gone through the rulings cited by them as well as gone through the case diary of North Lakhimpur P.S. Case No. 183/2023 (RC No. 0502023S0003).

22. On the basis of submissions made by the learned counsel for both sides and the rulings cited by them, following propositions of law as regards right of an accused to be released on default bail are relevant in the instant case: -

i. As per Section 173(2) of the Code of Criminal Procedure, 1973 the Officer in Charge of the Police Station shall forward the police report to a Magistrate empowered to take cognizance as soon as the investigation is completed in relation to the offence alleged;

ii. Thus, it is the Officer in Charge of the Police Station who shall have to arrive at the satisfaction that the investigation is completed, before he forwards the police report under Section 173(2) of the Code of Criminal Procedure, 1973 to a Magistrate empowered to take cognizance;

iii. One of the ways to ascertain as to whether the investigation was completed before it was forwarded to the Magistrate empowered to take cognizance is to examine the explicit language used in the report by the Investigating Officer/the Officer in Charge of the Police Station.

iv. If it is explicitly stated in the report submitted under Section 173(2) of the Code of Criminal Procedure, 1973 that the investigation is still pending, under such circumstances mere filing of such a report would not defeat the right of an accused to get default bail.

v. Whether an investigation in fact has remained pending and the Investigating Officer has submitted the chargesheet only with a view to

curtail the right of the accused would essentially be a question of fact, which may differ from case to case.

vi. Though, the report under Section 173(2) of the Code of Criminal Procedure, 1973 shall have to be filed only after completion of the investigation, however, filing of such a report does not preclude an Investigating Officer to carry on further investigation in terms of Section 173(8) of the Code of Criminal Procedure, 1973

vii. Where a chargesheet has been filed after completion of the investigation, within the time prescribed under Section 167(2) of the Code of Criminal Procedure, 1973 the right to get default bail by an accused cease. Such a right does not revive on initiation of further investigation under Section 173(8) of the Code of Criminal Procedure, 1973.

23. In the instant case, it appears from materials on record that the Investigating Officer had submitted the charge-sheet, i.e., the report under Section 173(2) of the Code of Criminal Procedure, 1973 on 19.08.2023 against the present petitioner and three other co-accused, with 74 numbers of prosecution witnesses and 88 numbers of documents relied upon by the prosecution enlisted in the charge-sheet in support of the prosecution's case. On perusal of the said report, it appears that the Investigating Officer had completed the investigation before submission of report on 19.08.2023 and sufficient materials were found against the present petitioner and the other co-accused named therein and on the basis of the same the cognizance of offence under Section 120B/342/388/395 of the Indian Penal Code was also taken by the learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur. As nothing has been mentioned against the other co-accused persons, who are not named in the charge-sheet, it is implicit that sufficient materials were not found against

them, however, same ought to have been explicitly mentioned in the said report by the Investigating Officer and their names ought to have been shown in the respective column in the charge-sheet regarding the accused person who are not sent up for trial. However, by not doing so, in itself, would not imply that the investigation remained incomplete when otherwise sufficient materials are there in the charge-sheet to indicate that the investigation was completed before the charge-sheet was laid by the Investigating Officer.

24. Similarly, mere mention in column No.16.16 of the charge-sheet that further investigation has been kept open to unearth the larger conspiracy and role of the other accused persons, in itself, would not imply that the charge-sheet has been laid without completing the investigation, as the power to conduct further investigation is recognised by the statute and filing of a report under Section 173(2) of the Code of Criminal Procedure, 1973 does not preclude an Investigating Officer to carry on further investigation in terms of Section 173(8) of the Code of Criminal Procedure, 1973.

25. The present petitioner was arrested on 26.05.2023 and the charge-sheet has been laid on 19.08.2023, i.e., it was laid well within the period of 90 days, therefore, the petitioner is not entitled to get default bail and his prayer for default bail was correctly rejected by the learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur.

26. However, it appears from record that even after submission of the charge-sheet under Section 173(2) of the Code of Criminal Procedure, 1973, even though the charge sheeted accused persons, including the present petitioner, were present before the committal court, learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur has not committed the case yet and has extended the date for completion of the further investigation and has fixed the case on

12.12.23 for submission of final form. The approach of learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur, does not appear to be correct as once final form has been submitted, any additional report, if submitted, would only be supplementary report under Section 173(8) of the Code of Criminal Procedure, 1973. Though, the present petitioner is not entitled to get default bail as the charge-sheet was laid well within the time stipulated under Section 167(2) of the Code of Criminal Procedure, 1973. However, as the petitioner has been detained behind the bar since last 180 days, unless there is some justification for his continued detention, he would be entitled to get regular bail.

27. Learned Special Public Prosecutor has opposed the grant of regular bail to the present petitioner on the ground that further investigation is going on and release of the present petitioner on bail at this stage would hamper further investigation. Though, the Investigating Agency has power to conduct further investigation under Section 173(8) of the Code of Criminal Procedure, 1973, however, in the considered opinion of this Court, same does not appear to be a just ground, under the facts and circumstances of the present case for denying the bail to the present petitioner as the evidence against the present petitioner has already been collected and charge-sheet under Section 173(2) of the Code of Criminal Procedure, 1973 has already been laid against him. As there are large number of witnesses (74 nos.) listed as prosecution witnesses in the charge-sheet, the completion of trial would likely to take considerable period of time and there is no justification in keeping the petitioner behind the bar during this period, if he otherwise cooperates in his trial.

28. For the aforesaid reasons, the petitioner, namely, *Riyajul Islam* is allowed to go on bail of Rs.30,000/- (Rupees Thirty Thousand only) with one surety of like amount to the satisfaction of learned Chief Judicial Magistrate, Lakhimpur,

North Lakhimpur, subject to following conditions:-

- i.** That the petitioner shall appear before learned Committal Court/Trial Court as and when so required by the said Court;
- ii.** The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of this case so as to dissuade such person from disclosing such facts to the Court or to the any Police Officer;
- iii.** The petitioner shall cooperate in any further investigation which may be pending in connection with North Lakhimpur P.S. Case No. 183/2023 (RC No. 0502023S0003) while he is on bail;
- iv.** Learned Trial Court may impose any additional condition of bail if it deems fit to do so, at any time, while the petitioner is enlarged on bail.

29. With the above observation, this bail application is hereby disposed of.

JUDGE

Comparing Assistant