

GAHC010253812022



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

Case No. : Crl.Pet./1257/2022

CHONGHOI HAOKIP
W/O- SHRI LUNGSIBUI THIUMAI, R/O- VILL- MAKUILONGDI, P.S.
SENAPATI, DIST.- SENAPATI, MANIPUR

VERSUS

THE UNION OF INDIA
REP. BY THE STANDING COUNSEL TO THE DIRECTORATE OF REVENUE
INTELLIGENCE

Advocate for the Petitioner : MR. Y S MANNAN

Advocate for the Respondent : SC, DRI

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
JUDGMENT

25.01.2023

Heard Mr. Y.S. Mannan, learned counsel for the petitioner. Also heard Mr. S.C. Kayel, learned Standing Counsel for the respondent.

2. In this petition, under Section 482 of the Code of Criminal

Procedure, the petitioner, namely, Smti. Chonghai Haokip, has challenged the correctness or otherwise of the order dated 23.12.2022, passed by the learned Addl. Sessions Judge, No.3, Kamrup (M) at Guwahati, in NDPS Case No.215/2022, arising out of DRI Case No. 18/CL/NDPS/HEROIN & METH/DRI/GZU/2021-22, under sections 8(C)/21(C)/22(C)/ 23(C)/25 of NDPS Act, pending before the court of learned Addl. Sessions Judge, No.3, Kamrup (M) at Guwahati.

3. It is to be mentioned here that, vide impugned order, dated 23.12.2022, the learned Addl. Sessions Judge, No.3, Kamrup (M) at Guwahati, has dismissed the petition filed by the petitioner for granting her default bail.

4. In order to decide the controversy at hand, with greater precision, it would be beneficial to briefly refer to the facts of the case, leading to passing of the impugned order, dated 23.12.2022.

“On 03.02.2022, acting on a tip off, Smti. Apsara Sikdel, Intelligence Officer, Directorate of Revenue Intelligence (DRI), Guwahati, had intercepted a Maruti Eco Van, bearing registration No. AS01-EY-3766, which was coming from Dimapur towards Guwahati, and recovered 679.60 grams of suspected heroin, 10,000 methamphetamine tablets weighing 1000 grams, of worth Rs. 1,47,11,648 (Rupees one crore forty seven lacs eleven thousand six hundred and forty eight only) which was kept concealed in a secret chamber of the said vehicle, and then she seized the same observing necessary

formalities in presence of witnesses and apprehended the driver of the vehicle namely Lumgsibul Thiumai and one passenger, namely, TH Tasibou and on being asked Shri Lumgsibul Thiumai disclosed that his wife and aunt are the owner of the seized contrabands. Thereafter, the Intelligence Officer has conducted search in the house of Lumgsibul Thiumai at Basistha, Guwahati and found his wife - Chonghoi Haokip (the present petitioner) and recovered suspected Heroine, in 26 soap case, and also recovered a sum of Rs. 4,45,200/ with three ATM Cards and seized the same in presence of witnesses preparing seizure list. Subsequently, after through search another 1,00,000/ (One Lakh) methamphetamine tablets were recovered from another secret chamber of the Maruti Eco Van, which were seized in presence of witnesses. Thereafter, the Intelligence Officer has arrested Shri Lumgsibul Thiumai, TH Tasibou and the present petitioner namely, Chonghoi Haokip and forwarded them to the court. Thereafter, before completion of 180 days of the period of custodial detention of the present petitioner, the Investigating Officer has filed a petition, under section 36A(4) NDPS Act, before the court of learned Special Judge, Kamrup (M), Guwahati, and vide order dated 22.07.2022, the learned court below has allowed the petition.

Thereafter, the petitioner has successfully challenged the order dated 22.07.2022, passed by the learned Special Judge, NDPS Act, Kamrup [M] at Guwahati before this court in Criminal

Petition No. 804/2022, and vide order dated 07.11.2022, a co-ordinate bench of this court has set aside the said order dated 22.07.2022, passed by the learned Special Judge, NDPS Act, Kamrup [M] in petition No. 2099/2022, as the same was passed without following the procedure prescribed by law and directed the petitioner to prefer an application for bail before the learned court below. Thereafter, the petitioner has preferred an application before the learned Addl. Sessions Judge, [FTC] [M] No. 3 for granting default bail to the petitioner and the learned court below vide order dated 23.11.2022 has dismissed the petition, by holding that the petitioner has failed to availed of her default bail when the same was accrued on 03.08.2022, which ceased to exist on filing of the offence report against the petitioner.”

5. Mr. Mannan, learned counsel for the petitioner submits that the petitioner was arrested on 04.02.2022, and as such the period of 180 days completed on 03.08.2022, and the petition for extension of the period of investigation was filed on 22.07.2022, under section 36[A][4] of the NDPS Act. Mr. Mannan further submits that prior to filing of the offence report by the Investigating Officer, one bail petition; No. 1635/2022, was pending before this court, which came to be dismissed on 11.08.2022. Mr. Mannan further pointed out that the petitioner had filed another bail application before the learned court of learned Special Judge, NDPS Act on 20.09.2022, and the same was dismissed on 26.09.2022, as in the meantime offence report was filed, granting liberty to the petitioner to file a fresh

application before the court of learned Addl. Sessions Judge No. 3, where the case has already been transferred. Referring to a decision of Hon'ble Supreme Court in **M. Ravindran vs. Intelligence Officer, Directorate of Revenue Intelligence**, reported in **2021 2 SCC 485**, Mr. Mannan submits that in view of the observations made in paragraph No. 25.2 of the said judgment the petitioner is entitled to default bail and the learned court below has failed to consider the same and passed the impugned order dismissing the prayer of the petitioner and as such, the same failed to stand the test of legal scrutiny and therefore, it is contended to set aside the same and to grant bail to the accused.

6. Whereas Mr. S.C. Keyal, the learned Standing Counsel has opposed the petition and submits that the right to grant default bail ceased to exist when charge sheet has been filed and prior to that day the petitioner has failed to avail the same. Mr. Keyal further submits that the offences are of serious in nature, and the petitioner may misuse the liberty if enlarged on bail and therefore, it is contended to dismiss the petition. Mr. Keyal also referred one case law of **State Through Central Bureau of Investigation vs. T. Gangi Reddy @ Yerra Gangi Reddy**, reported in **223 Legal Eagle SC 40** in support of his submission.

7. Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition and the documents placed on record and also perused the case laws referred by learned counsel for both the parties.

8. In the case of **M. Ravindran** [Supra] the Hon'ble Supreme Court, while dealing with the issue of default bail, in paragraph No. 25 has observed as under :-

“25. Therefore, in conclusion.

25.1. Once the accused files an application for bail under the proviso to section 167[2] he is deemed to have “availed of” or enforced his right to be released on default bail, accruing after expiry of the stipulated time-limit for investigation. Thus, if the accused applies for bail under section 167[2] Cr.P.C. read with section 36-A[4], NDPS Act upon expiry of 180 days or the extended period, as the case may be, the court must release him on bail forthwith without any unnecessary delay after getting necessary information from the Public Prosecutor, as mentioned supra. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigating agency.

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.

25.4. Notwithstanding, the order of default bail passed by the

court, by virtue of Explanation I to section 167[2], the actual release of the accused from custody is contingent on the directions passed by the competent court granting bail. If the accused fails to furnish bail and/or comply with the terms and conditions of the bail order within the time stipulated by the court, his continued detention in custody is valid."

9. In the case in hand, it appears from the documents placed record that the FIR was lodged on 04.02.2022, and the petitioner was arrested on the same day, and since then she has been languishing in jail hazoot. Further, it appears that and the period of 180 days came to be completed on 03.08.2022. It also appears that before completion of 180 days on 03.08.2022, the Investigating Officer has filed an application, under section 36[A][4] of the NDPS Act, before the court of learned Special Judge, NDPS Act, for extension of period of investigation and the learned court below after hearing the parties has extended the period of investigation for another 60 days. Thereafter, the petitioner has challenged the correctness of the aforesaid order, before this court by filing a Criminal Petition No. 804/2022, and vide order dated 07.11.2022, a coordinate Bench of this court, has allowed the petition and set aside the impugned order dated 22.07.2022, and granted liberty to the petitioner to approach the learned court below to apply for regular bail, and further directed the learned court below to consider the same in accordance with law without being influenced by any observation made in the said order.

10. Thereafter, the petitioner has filed an application before the

learned court below on 23.11.2022, for granting her default bail, and the learned court below vide impugned order dated 23.11.2022, which is annexed with the petition as Annexure No. IX, has dismissed the same on the ground that the petitioner has failed to enforced her right to default bail, when the same accrued on 03.08.2022, and the same cease to exist with filing of the offence report subsequently, and therefore, dismiss the petition. It also appears that the offence report was filed on 22.09.2022, and in between 03.08.2022, and 22.09.2022, one bail application being BA No. 1635/2022 was pending before this court, which was filed on 12.07.2022, and the same came to be dismissed on 11.08.2022. It also appears that the petitioner has filed another bail application under section 439 of the Cr.P.C. before the learned Special Judge, NDPS Act, Kamrup [M], Guwahati on 20.09.2022 and the same came to be dismissed on 26.09.2022. Mr. Mannan, learned counsel for the petitioner has rightly pointed out this during argument.

11. As in between 03.08.2022, (on which the right to grant default bail for the petitioner accrued) and on 22.09.2022, on which the offence report has been submitted before the learned court below, two bail applications being BA No. 354/2022, were pending before the learned court below which was filed on 20.09.2022, and came to be dismissed on 26.09.2022, and another bail application being BA No. 1635/2022, which was filed on 12.07.2022, and came to be dismissed on 11.08.2022, it cannot be said that the petitioner had failed to avail her indefeasible right to be released on default bail under section 167(2) Cr.P.C., in view of the observation made

by Hon'ble Supreme Court in the case of **M. Ravindran** [Supra] in paragraph No. 25.02, where it has been held that "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."

12. Thus, applying the ratio laid down in the case of **M. Ravindran** (supra) to the facts and circumstances of the case in hand, and also in view of the pendency of two bail applications, one in the learned court below, and another before this court, before filing of the offence report on 22.09.2022, the petitioner has availed her right to be released on default bail, which continued to remain enforceable from 03.08.2022, on which the same accrued, and continued to exist till 22.09.2022, on which the offence report was submitted. And as such, I find sufficient force in the submission of the learned counsel for the petitioner and record the line to the same.

13. Though Mr. Keyal, the learned Standing Counsel for the respondent has opposed the petition by referring the decision of the Hon'ble Supreme Court in the Case of **T. Gangi Reddy @ Yerra Gangi Reddy** [Supra], this court is unable to record concurrence with his submission and the ratio laid down in the case referred by

him, to the considered opinion of this court, would not come into his aid as the said case has to be treated as restricted to its own facts. The fact and circumstance of the case in hand is quite different from the aforementioned case. In the case in hand the order for refusal to grant default bail is being challenged, whereas, in the referred case, the subject matter was cancellation of default bail granted under section 167(2) Cr.P.C., invoking section 439[2] of the Cr.P.C.

14. In the result, I find sufficient merit in this petition and accordingly, the same stands allowed. The impugned order, dated 23.11.2022, stands set aside and quashed. However, instead of dealing with the prayer for granting bail, since this petition is filed under section 482 Cr.P.C., and in absence any extra-ordinary situation, this court deemed it fit and proper to relegate it to the learned court below. Accordingly, it is provided that the petitioner shall file a fresh petition before the learned court below, under section 167[2] of the Cr.P.C., along with a copy of this judgment and on receipt of the same the learned court below shall consider the same in accordance with law, and in the light of observation made hereinabove, and also in the case of **M. Ravindran** (supra), specially in para No. 25.2. The parties have to bear their own cost.

JUDGE

Comparing Assistant