

GAHC030001712023



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

Case No. : Crl.Pet./5/2023

Smt. Vanlalsiami and Anr.
Bethlehem Veng, Aizawl, Mizoram 2: Smt. Lalnunsiami
Zokhawhar
Champhai District
Mizora

VERSUS

State of Mizoram and Anr.
Aizawl2:The Officer-in-Charge
Anti-Narcotic Squad
Excise and Narcotics
Mizoram
Aizaw

Advocate for the Petitioner : Mr C Lalfakzuala

Advocate for the Respondent : P.P./Addl.PP, Mizoram

Linked Case : Bail Appln./10/2023

Smt. Vanlalsiami and Anr.
Bethlehem Veng
Aizawl
Mizoram

2: Smt. Lalnunsiami
Zokhawthar
Champhai Distict
Mizoram
VERSUS

State of Mizoram and Anr.
Aizawl

2:The Officer-in-Charge
Anti-Narcotic Squad
Aizawl

Advocate for the Petitioner : Mr C Lalfakzuala
Advocate for the Respondent : P.P./Addl.PP
Mizoram

**BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
ORDER**

Date : 19.05.2023

Heard Mr. C. Lalfakzuala, learned counsel for the petitioners along with Ms. Mary L. Khiangte, learned Addl. Public Prosecutor for the State respondents.

2. This is a petition filed under Section 482 Cr.P.C. for setting aside the impugned Order dated 15.3.2023 passed by the learned Judge, Special Court, ND & PS Act, 1985 and for the release of the petitioners on bail in the interest of justice

3. Brief background of the case is that the petitioners along with co-accused Vanlalvangi were arrested on 12.09.2022 at 7:25 p.m. for alleged possession of 303 grams of heroin. Hence, Excise & Narcotics Case No. N-124/2022 dated 13.09.2022 U/s 21 (c) of the ND & PS Act, 1985 was registered against the

petitioners.

4. The petitioners No. 1 & 2 have been detained in custody since their arrest on 12.09.2022. The co-accused Lalvangi was released on bail by the learned Judge, Special Court, ND & PS Act on 13.09.2022 wherein she expired while on bail. The petitioners applied for default bail on 14.3.2022 after 180 days of their arrest, under Section 167 Cr.P.C. read with Section 36 A(4) of the ND & PS Act, since no charge-sheet was filed against them. However, the learned Special Judge, ND & PS Act, 1985 vide the impugned Order dated 15.3.2023 rejected the application for grant of default bail on the grounds that the prosecution was given extension of time under Section 36A(4) of the ND & PS Act, 1985 on 05.12.2022.

5. Mr. C. Lalfakzuala, learned counsel for the petitioners submits that the impugned Order dated 5.12.2022 is liable to be set aside since the Order was passed mechanically without any application of judicious mind. He submits that the petitioners were not given any notice and they were not informed of the application for extension of the period made under Section 36 A(4), ND & PS Act on 05.12.2022. That the petitioners were not afforded any opportunity to make any objection to the applications filed by the case I/O and the learned Addl. Public Prosecutor and hence the impugned Order dated 5.12.2022,

granting extension of time for another 1 (one) year to complete the investigation is illegal and liable to be set aside.

6. In support of his submission the learned counsel has cited in the case of **Jigar alias Jimmy Pravinchandra Adatiya -vs- State of Gujarat** reported in **2002 SCC OnLine SC 1290** and **Sanjay Dutt -vs- State through C.B.I. , Bombay (II)** reported in **(1994) 5 SCC 410 para 53 (2)(a), Sanjay Kumar Kedia Vs. Intelligence Officer Narcotics Control Bureau & Anr.** reported in **(2009) 17 SCC 631 para 12.**

7. He further submits that the learned Judge, Special Court, ND & PS Act did not apply his mind while passing the order dated 5.12.2022 since the petitioners were arrested on 12.09.2022 and 180 days would have expired only on 12.3.2023. However, the application for extension of time was made on 5/12/2022 when the 180 days would be expiring only on 12.3.2023. The case I/O still had about 90 days to complete investigation before applying for the extension of time under Section 36 A(4), ND & PS Act.

8. Ms. Mary L. Khiangte, learned Addl. Public Prosecutor has strongly objected submitting that the learned counsel for the petitioners has gone beyond his pleadings since no mention was made with regards to the advanced application under Section 36 A(4), ND & PS Act filed before the expiry

of a 180 days. She further submits that since the Order dated 15.3.2023 is being challenged, the petitioners should have filed this petition under Section 397 Cr.P.C for revision of the order dated 15.03.2023, instead of Section 482 Cr.P.C. The learned Addl. Public Prosecutor further submits that Section 482 Cr.P.C. is not to be invoked when there is a cleared provision and remedy for revision under Section 397 Cr.P.C available. She also submits that if the petitioners are to approach this Court under Section 397 Cr.P.C., an application for condonation of delay will also have to be filed in filing the revision petition against the Order dated 15.2.2022, where the learned Judge, Special Court, ND & PS had allowed the extension of 1 (one) year for filing the charge-sheet under Section 36 A (4), ND & PS Act.

9. The learned Addl. Public Prosecutor further submits that the petitioners while applying for default bail did not mentioned or disclose anything about the extension of time of 1 (one) year in the application for default bail. That the petitioners are presumed to have knowledge of the extension of time since there is no statement that they did not know of the extension of time. Therefore, the learned Trial Court had rightly rejected the bail application vide its order dated 15.3.2023.

10. In support of her submission, the learned Addl. Public Prosecution has

cited **Judgebir Singh @ alias Jasbir Singh Samra @ Jasbir & Ors. -Vs- National Investigation Agency** reported in **2023 LiveLaw (SC) 377 in Criminal Appeal No.1011 & 1012 of 2023, May 1, 2023** and **Qamar Ghani Usmani Vs. The State of Gujarat** reported in **2023 LiveLaw (SC) 297 in Criminal Appeal Nos. 1045-1046/2023 SLP (CRL) Nos. 011196-011197/2022.**

11. In rebuttal Mr. C. Lalfakzuala, learned counsel for the petitioners submits that the instant petition cannot be a revision petition under Section 397 Cr.P.C. since the petition is against the Interlocutory Orders passed by the learned Judge, Special Court (ND & PS), which cannot be entertained under Section 397 Cr.P.C. He further submits that the petitioners have rightly approach this Court under Section 482 Cr.P.C. and in support of his submission he has cited the decision of the Apex Court in **Prabu Chawla .vs. State of Rajasthan & Anr.** reported in **(2016) 16 SCC 30.**

12. Having heard the submissions made by both the parties, this court finds that the instant application can be filed under Section 482 Cr.P.C to secure the ends of justice. On perusal of the impugned Orders dated 5.12.2022 this court finds that the Court had granted the extension of investigation period up to the 1 (one) year in terms of Section 36-A of ND & PS Act on the grounds that the

previous case I/O SI F. Zothanzuala, Excise & Narcotics was transferred to Siaha, and the case was endorsed to SI Lalnunfela to resume investigation of the case.

13. A perusal of the records shows that the petitioners were not represented nor were they produced before the Court, when the Order dated 5.12.2022 was passed. It cannot be presumed that they knew about the extension granted to the case I/O vide the Order dated 5.12.2022, since nowhere is it mentioned that copy of the order dated 05.12.2022 was furnished to the petitioners or that the petitioners were informed. The Apex Court in **Jigar alias Jimmy Pravinchandra Adatiya (Supra)** has held that an opportunity of being heard was to be given to the accused before time is extended to complete investigation.

14. It is also seen that the order dated 05.12.2022 granting extension of 1 year for the completion of investigation U/s 36A(4) ND & PS Act was passed about 90 days in advance before the expiry of 180 days, under section 36A (4) ND & PS Ac. The petitioners were arrested on 12.09.2022 therefore on 05.12.2022 the petitioners were in judicial custody for 85 days and Section 36 A(4) is with regards to extension of period after the expiry of 180 days and thus it is seen that 180 days would expired only on 12.3.2023. Even though the Apex

Court in **Judgebir Singh @ alias Jasbir Singh Samra @ Jasbir (Supra)** states that if extension is to be sought for completion of investigation it should not be sought at the last moment, such an advanced extension sought by about 90 days in advance is unacceptable and found that it is without any reasonable justification.

15. It is noted that the period of 180 days had expired when the petitioners applied for default bail before the Judge, Special Court (ND & PS), which passed the impugned order dated 15.03.2023. In view of the above findings, this Court is of the considered view that the Orders dated 5.12.2023 and 15.03.2023 suffers from legal infirmity and are liable to be set aside. On setting aside the Orders dated 5.12.2022 and 15.3.2023, the petitioners are granted default bail with a bail bond of Rs.50,000/- each and each with sureties who shall be to the satisfaction of the learned Judge, Special Court, ND & PS Act.

16. Accordingly, Criminal Petition No. 5/2023 along with Bail Application No.10/2023 stands allowed and disposed.

JUDGE

Comparing Assistant