

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

BAIL APPLICATION NO. 29 OF 2023

Ainul Haque Talukdar, aged about 49 years, S/o Late
Asakandar Ali Talukdar, resident of Dudhpatil Pt. VI,
P.O- Aticherra-7, Cachar, Assam-788002.

.... Petitioner

- Versus -

The Directorate of Revenue Intelligence, represented
by its Intelligence Officer, Imphal Regional Unit,
Manipur, Office of Hotel Imphal, North AOC Point,
Imphal-Dimapur Road, Imphal West District,
Manipur-795001.

.... Respondent

B E F O R E
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU

For the petitioner	:	Mr. Juno Rahman, Advocate
For the respondent	:	Mr. Th. Sanachouba, Advocate
Date of hearing	:	16.02.2024
Date of order	:	10.05.2024

J U D G E M E N T & O R D E R
(CAV)

[1] Heard Mr. Juno Rehman, learned counsel appearing for the petitioner and Mr. Th. Sanachouba, learned counsel appearing for the respondent at length.

[2] The present Bail Application has been filed under section 439 of Cr.P.C, 1973 r/w Section 37 of the ND&PS Act, 1985 and Section 167 (2) Cr.P.C, 1973 for releasing the petitioner on bail till the conclusion of Special Trial (ND&PS) Case No. 05 of 2023 pending before the Court of Special Judge, ND&PS, Tamenglong, Manipur. with the following prayers:

"(ii) to release the humble petitioner on bail in connection with Crime Case No. 01/CL/NDPS/HEROIN/ILP/2022-23 dated 18.03.2023 u/s 22, 23 & 25 of the ND&PS Act, 1985 in the facts and circumstances of the present Bail Application."

[3] On 18th March, 2023 at around 03:30 pm while en-route to Imphal, the petitioner's Truck was stopped at Khongsang Village, Nungba, Tamenglong by the officials of Directorate of Revenue Intelligence, Imphal. Thereafter, the petitioner along with his Truck was directed/ instructed to follow the officials to their office at Porompat, Imphal East District, Manipur. Upon reaching the office of the Directorate of Revenue Intelligence at Porompat, Imphal East District, Manipur the officials recovered around 170 (one hundred and seventy) soap cases believed to be Heroin. Accordingly, the petitioner was arrested and placed under custody on 18.03.2023 in connection with case No. 01/LD/NDPS/HEROIN/DRI/IMP/2022-23 dated 18.03.2023 U/s 21(c), 23(c), 25, 29 & 60 of the ND&PS Act, 1985.

[4] Subsequent to the arrest, the petitioner was produced before the Court of the Duty Magistrate/ Chief Judicial Magistrate, Tamenglong in Cril. Misc. Case No 9 of 2023. Accordingly, the Court of Duty Magistrate/ CJM, Tamenglong passed an order dated 19.03.2023 remanding the petitioner to judicial custody for 14(fourteen) days with direction to produce the petitioner before the Hon'ble Special Judge, (ND&PS), Tamenglong on 01.04.2023. Since, then the petitioner has been languishing in jail till date.

[5] As the petitioner was languishing in jail for more than 180 days prior to filing of the Charge Sheet, the petitioner moved the Court of Special Judge, ND&PS, Tamenglong, Manipur for releasing the petitioner on bail by way of Cril. Misc. (B) Case No. 5 of 2023. After hearing both the parties and upon perusal of the materials placed on record, the Court of Special Judge, (ND&PS), Tamenglong, Manipur passed an order dated 14.09.2023 in Cril. Misc. (B) Case No. 5 of 2023 releasing the petitioner on bail by furnishing PR bond of Rs. 1,00,000/- (Rupees one lakh) only and 2(two) local sureties of the like amount to the satisfaction of the Court. However, the petitioner was unable to furnish the PR bond immediately and took some time.

[6] Meanwhile on 27.09.2023, the petitioner made a request to furnish the said PR bond before the Court of Special Judge, ND & PS, Tamenglong but the same was refused and remanded into further custody of 15(fifteen) days with no specific ground for refusing the said PR bond furnished by the petitioner.

[7] On 11.10.2023, the Special Judge (ND & PS), Tamenglong passed an order in Special Trial (ND & PS) Case No. 5 of 2023 thereby cancelling the order dated 14.09.2023 passed in Cril. Misc (B) Case No. 05 of 2023 wherein the petitioner was

released on bail on the ground that charge sheet has already been filed.

[8] During the course of hearing the learned counsel for the petitioner submitted that the Special Judge (ND&PS), Tamenglong, Manipur failed to appreciate the fact that the petitioner was already granted bail prior to filing of the Charge sheet on 14.09.2023 and that the charge sheet was filed only on 27.09.2023. The only reason that the petitioner was still in custody at the time of filing the charge sheet was for the reason that the petitioner was not able to furnish the PR of Rs. 1,00,000/- and 2 local sureties of like amount. That on 27.09.2023 when the petitioner was ready to furnish the said conditions, the Court of Special Judge (ND&PS), Tamenglong refused to entertain the same on the ground that the charge sheet has been filed by the Special PP for DRI, only on the ground that charge sheet has been filed, the right to be released on bail was curtailed thereby remanding the petitioner into further custody. Since then the petitioner has been languishing in jail till date with no hope for freedom even though Bail has already been granted by the Court.

[9] In support of his case, the learned counsel for the petitioner mentioned "Bail Application No. 8 of 2019" where the petitioners was released on bail by the Hon'ble High Court of Manipur in which the petitioners were languishing in jail for more than 400 days.

[10] The learned counsel for the respondent has filed their objection stating that the petitioner himself admitted in his voluntary statement dated 18.03.2023 that he has successfully smuggled & delivered contraband drugs in earlier one occasion and the instant case is his second attempt. The officer of DRI, Imphal Regional Unit arrested the petitioner along with his vehicle Tata truck u/s 42 & 43 of the NDPS Act, 1985 on the reasonable believe that he has

committed an offence punishable u/s 22, 23 & 25 of the NDPS Act and filed a case.

[11] The officer of DRI, Imphal Regional Unit sent the sample of the seized 1989.98 grams of Heroin Powder to Director of Forensic Science, Pangei, Manipur for testing and got testing report issued vide Memo No. 31/10/88-DFS (CHEM) dated 21.06.2023 mentioned that **the seized substance gave positive response to the test of Heroin.**

[12] The learned counsel for the respondent submitted that the respondent has already file a final complaint to the Hon'ble Court of the Special Judge, ND&PS, Tamenglong, Manipur vide Special Trial (NDPS) Case No. 5 of 2023. The I.O. has completed the investigation and filed a charge sheet on 21.09.2023 clearly establishing his role and complicity in the inter-state drug smuggling syndicate. The Hon'ble Court of Special Judge (ND&PS), Tamenglong has taken cognizance of the offence and also noted that the materials on records enclosed therein with the charge sheet, exist sufficient materials for prosecuting the accused and thus, the bail granted earlier vide order dated 14.09.2023 was cancelled on 27.09.2023 considering the facts stated above.

[13] According to the learned counsel for the respondent, if the investigation reveals that the accused has committed a serious offence and charge sheet is filed, the bail granted under proviso (a) to section 167(2) of Cr.P.C. could be cancelled on an application by the prosecuting agency. Section 437(5) provide for the cancellation of bail by a Court other than a High Court or a Session Court. Meaning thereby it confers power of cancellation on the magistrate court. As per section 37 of the NDPS Act, the court can grant bail to the accused only if it is satisfy that there are reasonable grounds for

believing that he is not guilty of such offense and that he is not likely to commit any offense while on bail. The bail granted u/s 436 Cr.P.C. can be cancelled by High Court or Session Court u/s 439 (2) – Orissa High Court.

[14] The learned counsel for the respondent further submitted that the default bail is not granted on merits, it may be canceled after the filing of a charge sheet if a strong case is made against the accused for a non bailable offence. But section 437(5) is the provision understood as the provision enabling a magistrate for cancellation of bail granted by the Magistrate in respect of a non bailable offence. Similarly, section 439(2) is the provision understood as locating the power of session judge and the High Court for cancelling the bail.

[15] The learned counsel for the petitioner submitted written argument on behalf of the petitioner and further submitted that although the bail granted under section 167(2) Cr.P.C can be cancelled on an application made by the prosecution, till date no application has been filed by the prosecution till date for cancellation of the bail granted by the Court of Special Judge (ND&PS), Tamenglong in Cril. Misc. (B) Case No. 5 of 2023 order dated 14.09.2023.

In State through Central Bureau of Investigation Vs T. Gangi Reddy, (2023) 4 SCC 253 it is observed as under:

"27. From the above, the law, which emerges is that mere filing of the charge-sheet subsequent to a person is released on default bail u/s 167(2) Cr.P.C. cannot be a ground to cancel the bail of a person, who is released on default bail."

In Babu Singh & Ors Vs The State of Uttar Pradesh, AIR 1978 SC 527 it has been observed as under:

"2. an order refusing an application for bail does not necessarily preclude another on a later occasion, giving more materials further developments and different considerations.

8. personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognized under Art. 21 that the crucial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community. To glamorize impressionistic orders as discretionary may, on occasions, make a litigative gamble decisive of a fundamental right. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipses only in terms of procedure established by 'law'. The last four words of Art.21 are the life of that human right."

In *Siddharam Satlingappa Mhetre Vs State of Maharashtra and Ors*, (2011) 1 SCC 694 it has been observed as under:

"14. When we carefully analyse this section, the wisdom of the legislature becomes quite evident and clear that the legislature was keen to ensure respect for the personal liberty and also pressed in service the age-old principle that an individual is presumed to be innocent till he is found guilty by the court."

In *Sanjay Chandra Vs Central Bureau of Investigation* (2012) 1 SCC 40 it has been observed as under:

"40. The grant of refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required."

In *Registrar General, High Court of Patna Vs. Pandey Gajendra Prasad and Others*, (2012) 6 SCC 357 it has been observed as under:

"15. Bearing in mind the scope of Article 235 of the Constitution we may now advert to the facts at hand. As aforesaid, according to the report of the enquiry officer only Charges II and III, as extracted above, stood proved against Respondent 1. It is manifest that in both cases, the charge is related to the grant of bail by Respondent 1. While it is true and relevant to note that "grant of bail" is an exercise of judicial discretion vested in a judicial officer to be exercised depending on the facts and circumstances before him, yet it is equally important that exercise of that discretion must be judicious having regard to all relevant facts and circumstances and not as a matter of course."

[16] It is admitted fact that the learned Special Judge (ND&PS), Tamenglong released the accused/petitioner on bail as default bail i.e. after the expiry of 180 days of Judicial remand and also before filling of charge sheet, further it is also admitted fact that charge sheet was filed by the prosecution after the default bail was granted by the learned Special Judge (ND&PS), Tamenglong, further it is also admitted facts that I.O of the case submitted charge sheet on 21.09.2023, further it is also an admitted fact that the prosecution did not filed any application to cancelled the bail order of the accused/petitioner before the learned Special Judge (ND&PS), Tamenglong. But, the accused/petitioner failed to furnish the required bonds immediately due to the petitioner being from a very poor family and accordingly took time to furnish the same before the learned court. However, the accused/petitioner filed an application on 27.09.2023 with the request to allow him to furnish the required bond but the learned Special Judge (ND&PS), Tamenglong rejected.

[17] The learned Special Judge (ND&PS), Tamenglong passed the following orders;

"The UT has been produced by the Jail Authority of Manipur Central Jail, Sajiwa through Video Conferencing using Jitsi Meet.

Ld. Counsel for the UT has filed Vakalatnama today.

She prays for releasing the UT on bail u/s 167(2) Cr.P.C. as per order dated 14th September, 2023 passed in Cril.

Misc (B) Case No. 5 of 2023 pending investigation and inquiry of the case by furnishing required bonds as per the said order passed by this Court.

However, the prosecution being the Intelligence Officer, Directorate of Revenue Intelligence, Imphal Regional Unit had already submitted chargesheet vide order dated 21st September, 2023 and accordingly this Court has taken cognizance of offence u/s 21, 22(c), 23(c) & 25 of NDPS Act, 1985 vide order dated 27th September, 2023. Further, the prosecution has submitted that the R.P. has already been furnished to the UT through the Addl. S.P. Central Jail, Sajiwa, Manipur on 3rd October, 2023.

Upon submission of the chargesheet vide order dated 21st September, 2023 and the UT being unable to furnish necessary bonds was further remanded into judicial custody u/s 309(2) of Cr.P.C. vide order dated 27th September, 2023 for standing trial against the charges leveled by the prosecution.

The Ld. PP has appeared and prays for adjourning the charge consideration hearing today on the ground that he is suffering from viral fever.

In the meantime, Ld. Counsel for the UT is allowed to interview and receive R.Ps from the Jailor, Manipur Central Jail, Sajiwa.

The Ut may be allowed to contact his family member through phone whatever necessary.

Hence, the hearing is adjourned today.

In the meantime, the order dated 14th September, 2023 passed in Cril. Misc. (B) Case No. 5 of 2023 is not maintainable and stands cancelled.

The Addl. S.P. of Manipur Central Jail, Sajiwa, Manipur is directed to produce the accused on 25.10.2023 at 11:30 AM for charge consideration and hearing.

Send an extract copy of this order to the Addl. S.P of Manipur Central Jail, Sajiwa, Manipur and Standing Counsel of DRI for information."

[18] The point to be considered now is after the default bail is granted but before the submission of required bonds chargesheet is filed by the prosecution whether the Court can dismiss the bail on the ground that the chargesheet is filed and cognizance of the offences taken.

[19] Learned counsel for the petitioner submitted that bail granted under section 167(2) can be cancelled on an application but the order dated 11.10.2023 of the learned special Judge (ND&PS), Tamenglong was passed thereby cancelling the bail order dated

14.09.2023 only on the ground that the chargesheet was filed without any application filed by the prosecution. Further, referred to section 437(5) and section 439(2) but both sections are not applicable in the present bail application.

[20] The learned counsel for the petitioner made reference to the following judgement of the supreme court in support of his case;

1. In State through Central Bureau of Investigation Vs T. Gangi Reddy, (2023) 4 SCC 253 it is observed as under:

"27. From the above, the law, which emerges is that mere filing of the charge-sheet subsequent to a person is released on default bail u/s 167(2) Cr.P.C. cannot be a ground to cancel the bail of a person, who is released on default bail."

2. In Babu Singh & Ors Vs The State of Uttar Pradesh, AIR 1978 SC 527 it has been observed as under:

"2. an order refusing an application for bail does not necessarily preclude another on a later occasion, giving more materials further developments and different considerations.

8. personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognized under Art. 21 that the crucial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community. To glamorize impressionistic orders as discretionary may, on occasions, make a litigative gamble decisive of a fundamental right. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclips only in terms of procedure established by 'law'. The last four words of Art.21 are the life of that human right."

3. In Siddharam Satlingappa Mhetre Vs State of Maharashtra and Ors, (2011) 1 SCC 694 it has been observed as under:

"14. When we carefully analyse this section, the wisdom of the legislature becomes quite evident and clear that the legislature was keen to ensure respect for the personal liberty and also

pressed in service the age-old principle that an individual is presumed to be innocent till his is found guilty by the court."

4. In Sanjay Chandra Vs Central Bureau of Investigation (2012) 1 SCC 40 it has been observed as under:

"40. The grant of refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required."

5. In Registrar General, High Court of Patna Vs. Pandey Gajendra Prasad and Others, (2012) 6 SCC 357 it has been observed as under:

"15. Bearing in mind the scope of Article 235 of the Constitution we may now advert to the facts at hand. As aforesaid, according to the report of the enquiry officer only Charges II and III, as extracted above, stood proved against Respondent 1. It is manifest that in both cases, the charge is related to the grant of bail by Respondent 1. While it is true and relevant to note that "grant of bail" is an exercise of judicial discretion vested in a judicial officer to be exercised depending on the facts and circumstances before him, yet it is equally important that exercise of that discretion must be judicious having regard to all relevant facts and circumstances and not as a matter of course."

[21] In the facts and circumstances discussed above and in conjunction with the Hon'ble Supreme Court's observation made in the forgoing I am of the view that the submission made about by the learned counsel for the petitioner found reasonable, hence, accepted and on top of that in the present case the Hon'ble Supreme Court's observation made in State through Central Bureau of Investigation Vs T. Gangi Reddy, (2023) 4 SCC 253 squarely covered. Accordingly the

accused/petitioner is released on bail on his furnishing of PR bond of Rs. 2,00,000/- (Rupees Two Lakh) only with 2 (two) sureties of two local Government employee of like amount to the satisfaction of the learned Special Judge (ND&PS), Tamenglong. The petitioner should not leave the State of Manipur without prior permission from the Court concerned.

As the charge sheet has already been filed and as the trial is to be started, the accused/petitioner is directed to appear before the Ld. Trial Court on every date/dates fixed by the Ld. Court for further proceeding of the trial.

[22] The accused/petitioner is directed to furnish the required bonds before the learned Special Judge (ND&PS), Tamenglong within 7(seven) days.

[23] Accordingly, the present bail application is allowed and disposed of.

[24] Send an extract copy of this order to the Court of learned Special Judge (ND&PS), Tamenglong.

JUDGE

FR/NFR

Lucy