

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

CRIL. PETN. No. 47 of 2023

1. Mr. Lamkholal Haokip aged about 27 years S/o Lhungkam Haokip, a resident of Molhoi Village, P.O. & P.S. Churachandpur, New Lamka, Churachandpur District, Manipur.
2. Mr. Jangminthang Baite aged about 35 years S/o Jangmang Baite, resident of Khonnom Village, P.S. Moirang, Churachandpur District, Manipur.

.... Petitioners

- Versus -

1. The State of Manipur through its Commissioner/Secretary (Home), Government of Manipur, Old Secretariat Building, Babupara, Imphal West District, Manipur – 795 001.
2. The Officer-in-Charge, Bishnupur Police Station, Bishnupur District, Manipur.

.... Respondents

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

For the petitioners : Mr. Chihanpei PA, Advocate
For the respondents: Mr. H. Samarjeet, Public Prosecutor
Date of hearing : 08.02.2024
Date of order : **22.02.2024**

O R D E R
(CAV)

[1] Heard Mr. Chihanpei PA, learned counsel appearing for the petitioners and Mr. H. Samarjeet, learned PP appearing on behalf of the respondents.

[2] The present petition has been filed under Section 482 of Code of Criminal Procedure, 1973 with the following prayers :

- (i) To quash and setting aside the impugned common order dated 16.09.2023 passed by the Ld. Special Judge (ND&PS Court), Bishnupur in Cril. Misc. (Bail) Case No. 64 of 2023, Cril. Misc. (Bail) Case No. 65 of 2023 and Cril. Misc. No. 36 of 2023 with reference to FIR No. 03(02) 2023 PCGI u/s 21 (c), 60(3) and 23 ND&PS Act.
- (ii) To release the accused on statutory/default bail with reference to FIR No. 03(02) 2023 PCGI u/s 21(c), 60 (3) and 29 NDPS Act.

[3] The petitioners were arrested on 10.02.2023 in connection with the FIR No. 03(2) 2023 PCGI u/s 21 (c), 60(c) and 23 NDPS Act by a joint team consisting of two teams of CDO Unit BPR. On 11.02.2023 both the petitioners were first remanded to Police Custody for 7 (seven) days w.e.f. 11.02.2023 to 17.02.2023 by the Ld. Chief Judicial Magistrate, Bishnupur and the same was allowed. Later, they were sent to judicial custody on 17.02.2023 and till date they are languishing in Sajiwa Central Jail, Manipur.

[4] On 21.08.2023, the petitioners filed a statutory/default bail application being Cril. Misc. (B) No. 64 of 2023 and Cril. Misc. (B) No. 65 of 2023 as they had already been 192 days in jail since their first remand. On the same day, the respondent No. 2 i.e. Officer-in-Charge, Bishnupur Police Station, Bishnupur District, Manipur under Section 36-A (4) ND & PS Act praying for extending the time of investigation from 180 days to one year

being registered as Cril. Misc. (B) No. 36 of 2023 on the premises that the expert opinion from DFS, Manipur Pangei is awaited and against which, the petitioners filed an objection.

[5] Vide common order dated 16.09.2023 passed in Cril. Misc. (B) Case No. 64 of 2023, Cril. Misc. (B) Case No. 65 of 2023 and Cril. Misc. (B) No. 36 of 2023, impunged herein, of the Ld. Special Judge (ND & PS), Bishnupur, the statutory/default bail application was dismissed and the application for extension of time for investigation filed by the respondent No. 2 was allowed.

[6] The learned counsel appearing for the petitioners submits that the Ld. Special Judge (ND & PS), Bishnupur wrongly recorded in the impugned order dated 16.09.2023 that the application for extension filed by the respondent No. 2 was on 18.08.2023, whereas the e-Court services clearly shows that the said application was filed on 21.08.2023 by the respondent No. 2 only after the petitioners had filed their bail application on 21.08.2023. The Hon'ble Supreme Court held in ***Criminal Appeal No. 699 of 2020 [Ravindran V. Intelligence Officer, Directorate of Revenue Intelligence, (2021) 2 SCC 485]*** that the extension application can only be considered when the public prosecutor files a report seeking extension of time prior to filing of the application for the default bail.

The ground for extension sought was only on the report of the expert from DFS Pangei and the issue had already been decided in a two Judges' Bench of the Hon'ble Supreme Court in ***Criminal Appeal Nos. 2008 – 09 of 2008, Sanjay Kumar Kedia alias Sanjay Kedia V. Intelligence Officer, Narcotic Control Bureau & Anr. (2009) 17 SCC 631*** dated 20.08.2009. In addition, the application for extension did not contain any report from the public prosecutor which is mandatory as mentioned in Section 36A as reiterated in the case aforementioned, also in two Judges' Bench of the Hon'ble Supreme Court in ***Criminal Appeal No. 732-735, Hitendra Vishnu Thakur &***

Ors. V. State of Maharashtra & Ors. (1994) 4 SCC 602 decided on 12.07.1994.

[7] The learned PP appearing for the respondents filed their objection stating that State had filed the application for extension of time earlier to the default bail application as the entry in the e-Court cannot be done belatedly but could only be done chronologically.

As per the decision of the 3 (three) Judges' Bench judgement in **M. Ravindran V. Intelligence Officer, Directorate of Revenue Intelligence (2021) 2 SCC 485** at Para No. 25 it is held as follows:

"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 will be extinguished"

In **Hintendra Vishnu Thakur V. State of Maharashtra (1994) 4 SCC** at Para No. 23 & 64, it has been held by the Hon'ble Supreme Court as thus:

"Whether the Public Prosecutor labels his report as a report or as an application for extension would not be of much consequence so long as it demonstrates on the face of it that he has applied his mind and is satisfied with the progress of the investigation and the genuineness of the reasons for grant of extension to keep an accused in further custody as envisaged under the provision."

The Charge sheet has been submitted before the Hon'ble Special Court and the relevant papers have also been furnished to the accused persons. The ground for extension of time sought by the Public Prosecutor was a very valid ground since the FSL report was awaited and the report is vital for the investigation and required for providing the guilt or innocence of the accused. The offence committed involves commercial quantity and the offenders need to be strictly dealt with the law as narcotic drugs destroy the lives of the individual, the family and the society.

In **Hitendra Vishnu Thakur & Ors. V. State of Maharashtra (1994) 4 SCC 602** at Para No. 30, the Hon'ble Supreme Court held as follows:

"30. It is, however, permissible for the Public Prosecutor to resist the grant of bail by seeking an extension under clause (bb) by filing a report for the purpose before the Court In view of the matter, it is immaterial whether the application for bail on ground of 'default' u/s 20(4) is filed first or the report as envisaged by clause (bb) is filed by the public prosecutor so long as both are considered while granting or refusing bail."

Regarding the importance of FSL report in ND & PS cases, the Hon'ble High Court of Punjab and Haryana in the case of ***Saleem @ Mulla V. State of Haryana (CRM-M-11271-2021(O & M))*** decided on 26.03.2021 observed as follows:

".....Investigation would be deemed to have been completed in cases under the ND & PS Act only after an opinion has been formed and given by the chemical examiner qua the nature of the articles/substance sent to it by the investigating agency. Therefore, without a doubt in cases under the ND & PS Act, FSL report would be a decisive document to link the accused with the alleged commission of crime for attracting the mischief of offences under the ND & PS Act. It is precisely for this reason that it becomes imperative in cases under the ND & PS Act that the challan is mandatory accompanied by FSL report. Unless and until no definite opinion is given by the chemical examiner qua the nature of the articles etc. sent, it would lead to no other inference but the one that the investigation is still incomplete as 'smell' and 'sight' of the articles/substance seized by the investigating agency cannot be taken to be conclusive proof of the nature of the articles/substance."

[8] After considering, the rival contention of the parties the facts remains statutory/default bail for Cril. Misc. (B) No. 64 of 2023 and Cril. Misc. (B) No. 65 of 2023 where filed on 21.08.2023 also the application of the Officer-in-Charge, Bishnupur police station u/s 36-A (4) ND & PS Act wherein praying for extending the time of investigation from 180 days to one year was also filed on the same day i.e. 21.08.2023. But, in spite of the learned PP appearing for the State respondents submission about the fact that the said application of the OC was filed on 18.08.2023 and the learned Special Judge (ND & PS), Bishnupur passed common order dated 16.09.2023 thereby rejecting the bail application of the petitioner and allowed the application for extension of time for investigation filed by the OC, Bishnupur police station. It is evident that both petitions were heard on merit and disposed of on merit in the said common order.

[9] In the facts and circumstances and the discussions made above in conjunction with citations as discussed above, the learned Special Judge (ND&PS), Bishnupur rightly passed the common order dated 16.09.2023 wherein the application filed by the OC, Bishnupur for extension of time for investigation was allowed and the bail application filed by the petitioner were dismissed.

[10] In the result, the present bail application filed by the petitioner is dismissed and disposed of. However, the petitioner is given liberty to file a fresh application on other ground, if desired.

[11] Send an extract copy of this order to the court of Special Judge (ND&PS), Bishnupur.

JUDGE

Bipin