



Serial No. 03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No. 37 of 2024

Date of Decision: 22.10.2024

Shri. Sanget Deb Barman
S/o Shri. D.S. Barman
R/o Aidankul,
P.O Chamahour, P.S Khowai
District Khowai, Tripura

.....**Petitioner**

-VERSUS-

Union of India
Directorate of Revenue
Intelligence (DRI) Shillong

.....**Respondent**

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Ms. S. Nongsiej, Adv.

For the Respondent(s) : Dr. N. Mozika, DSGI with
Ms. R. Fancon, Adv.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
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ii)	Whether approved for publication in press:	Yes/No
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ORDER (ORAL)

1. Heard Ms. S. Nongsiej, learned counsel for the petitioner who has submitted that the petitioner being aggrieved by the order dated



18.07.2023 passed by the learned Special Judge (NDPS) in DRI Case No.07/CL/NDPS/GANJA/DRI/SHG/2023-24 has now approached this Court with a prayer for quashing and setting aside the said order impugned herein.

2. It is the submission of the learned counsel that the petitioner was arrested by the officers of the Directorate of Revenue Intelligence (DRI), Shillong Regional Unit on 14.01.2023 and was remanded to judicial custody on the same day. The petitioner is still under custody till date, his custody being extended from time to time on prayer of remand.

3. The petitioner being in custody for more than 180 days, therefore on 14.07.2023 an application for grant of default bail was preferred before the trial court, the application being registered as Bail Application No. 174(H) 2023 wherein the learned Special Judge had posted the matter for hearing on 18.07.2023.

4. It is also mentioned that the DRI on an application made under Section 36A(4) of the NDPS Act dated 12.07.2023 had also made a prayer before the trial court to allow extension of the period of investigation by 90 days. The said application was also finally heard on 18.07.2023.

5. The learned Special Judge vide related order dated 18.07.2023 has allowed the prayer for extension of the period of investigation by another 45 days effective from 13.07.2023.

6. By another order of even date that is, on 18.07.2023 passed in Bail Application No. 174(H) 2023, the learned Special Judge has rejected the prayer made therein by observing that the court having



extended the period of investigation for another 45 days and further remand of the accused beyond the period of 180 days being allowed, the grant of default bail to the accused person does not accrue.

7. The learned counsel has submitted that the observations made and the rejection of the application for grant of default bail by the learned Special Judge has been made on a wrong assumption of the facts and the settled legal position governing the provision of default bail.

8. It is the contention of the learned counsel that the mandatory period of 180 days stipulating the time within which the chargesheet should be filed in cases under the NDPS Act involving investigation in case of seizure of commercial quantity of narcotic substance as far as the case in hand is concerned has expired on 12.07.2023. On the 180th day no chargesheet has been filed instead an application for extension of time to file the same has been preferred. The learned Special Judge immediately on receipt of the said application has not passed any order but has finally passed the same only on 18.07.2023, that is, after 6 days when the right to default bail has accrued. In the meantime, the petitioner being entitled to default bail since the chargesheet has not been filed within or on the 180th day, on the 182nd day, that is, on 14.07.2023, the petitioner has accordingly preferred the said application for grant of default bail. The learned Special Judge having failed to pass any effective order on the application for extension of time for further investigation, even if such application is pending consideration at the time when the application for grant of default bail was made, it is incumbent upon the learned Special Judge to allow the prayer for grant of default bail, submits the learned counsel.



9. In support of this contention, the case of Judgebir Singh @ Jasbir Singh Samra @ Jasbir & Ors. v. National Investigation Agency was cited by the learned counsel for the petitioner referring to para 76 and 77 of the order dated 01.05.2023 in Criminal Appeal No. 1011 and 1012 of the 2023. The case of Grant Victor Ikenna v. State Rep. by the Inspector of Police, NIB-CID, Chennai before the Hon'ble Madras High Court was also cited, particularly at para 8, 9 and 10 of the order dated 08.02.2024. The case of M. Ravindran v. The Intelligence Officer, Directorate of Revenue Intelligence, (2020) 12 SCR 915 para 12 was also relied upon in this regard.

10. Learned DSGI, Dr. N. Mozika in support of the impugned order has submitted that the facts that are to be noted is that the application for extension of time to complete the investigation has been filed prior to the application for grant of bail filed by the petitioner.

11. The learned DSGI on the contention of the learned counsel for the petitioner that the application for grant of default bail ought to have been considered by the learned Special Judge in spite of the said application for extension of time being filed by the DRI, has submitted that the answer to this contention is that the trial court being aware of the two applications pending for consideration has come to the right decision, when on the application for extension of time being allowed, the issue of default bail has lost its relevance. In support of this contention, the case of Sanjay Dutt v. State through C.B.I., Bombay (II) reported in (1994) 5 SCC 410 was cited wherein at para 48 of the same the Hon'ble Supreme Court has observed that if there is an application for release on bail under Section 167 Cr.P.C and also another application with a prayer for extension of time to complete the investigation then in



such a case bail cannot be granted unless the application for extension of time is rejected. This is exactly the situation as regard the impugned order dated 18.07.2023 when the prayer for grant of default bail has been rejected by the trial court, submits the learned DSGI.

12. This Court has given due consideration to the submissions of the learned counsels for the respective parties, the facts as stated above not required to be recounted, what is required to be considered here is the legal aspect of the matter.

13. The law is present which provides for an accused person to seek enlargement on default bail if he is in custody beyond the period stipulated for filing of the final report or the charge sheet by the Investigating Officer (IO), in cases under the NDPS Act, for an offence under Section 20(C), involving seizure of a commercial quantity of contraband substance, the period for filing of the chargesheet is fixed at 180 days as per Section 36A(4) NDPS Act, where it is expected that the investigation would have been concluded. However, if the investigation could not be completed within such period of 180 days, the prosecution is permitted to seek extension of such stipulated period.

14. In the case between the parties herein, admittedly, the period of 180 days has since expired when, on the 180th day, the prosecution has filed an application for extension of time to complete the investigation.

15. Again, as is provided under Section 167(2) of the Code of Criminal Procedure, on expiry of the period stipulated for filing the chargesheet, an indefeasible right has accrued to the accused to seek release on default bail which ought to be granted by the court on an application made therein. The petitioner has also accordingly filed such



bail application on 14.07.2023, two days after the stipulated period of 180 days has expired and no chargesheet having been filed till such date.

16. The Apex Court in the case of Judgebir Singh @ Jasbir Singh Samra @ Jasbir (supra), particularly para 76 and 77 relied upon by the petitioner has dealt with a situation wherein an application for extension of time to complete the investigation was filed prior to the expiry of the statutory period for filing of the chargesheet, but such application was taken up and an order passed only after 10 days or so after the expiry of such statutory period, the question of the Court was what would have happened had an application for grant of default bail been filed during the pendency of consideration of the said application for extension of time. The Court has answered this question at para 77 when it observed 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 chargesheet or a report seeking extension of time by the prosecution before the court”*.

17. The Apex Court upon such observations as at para 76 and 77 having been made has further qualify the same by the observation rendered at para 78 of the same, which somewhat resemble the situation wherein the impugned order dated 18.07.2023 was passed. Reproduction of the said observations is being made herein as:

“78. Our observations in paras 76 and 77 respectively as above are keeping in mind the decision of this Court rendered by a three-Judge Bench in the case of Sayed Mohd. Ahmad Kazmi v. State (Government of NCT of Delhi) and Others reported in (2012) 12 SCC 1, wherein in paras 25, 26 and 27 respectively, this Court observed as under:



“25. Having carefully considered the submissions made on behalf of the respective parties, the relevant provisions of law and the decision cited, we are unable to accept the submissions advanced on behalf of the State by the learned Additional Solicitor General Mr Raval. There is no denying the fact that on 17-7-2012, when CR No. 86 of 2012 was allowed by the Additional Sessions Judge and the custody of the appellant was held to be illegal and an application under Section 167(2) CrPC was made on behalf of the appellant for grant of statutory bail which was listed for hearing. Instead of hearing the application, the Chief Metropolitan Magistrate adjourned the same till the next day when the Public Prosecutor filed an application for extension of the period of custody and investigation and on 20-7-2012 extended the time of investigation and the custody of the appellant for a further period of 90 days with retrospective effect from 2-6-2012. Not only is the retrospectivity of the order of the Chief Metropolitan Magistrate untenable, it could not also defeat the statutory right which had accrued to the appellant on the expiry of 90 days from the date when the appellant was taken into custody. Such right, as has been commented upon by this Court in Sanjay Dutt [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433] and the other cases cited by the learned Additional Solicitor General, could only be distinguished (sic extinguished) once the charge-sheet had been filed in the case and no application has been made prior thereto for grant of statutory bail. It is well-established that if an accused does not exercise his right to grant of statutory bail before the charge-sheet is filed, he loses his right to such benefit once such charge-sheet is filed and can, thereafter, only apply for regular bail.

26. The circumstances in this case, however, are different in that the appellant had exercised his right to statutory bail on the very same day on which his custody was held to be illegal and such an application was left undecided by the Chief Metropolitan Magistrate till after the application filed by the prosecution for extension of time to complete investigation was taken up and orders were passed thereupon.

27. We are unable to appreciate the procedure adopted by



the Chief Metropolitan Magistrate, which has been endorsed by the High Court and we are of the view that the appellant acquired the right for grant of statutory bail on 17-7-2012, when his custody was held to be illegal by the Additional Sessions Judge since his application for statutory bail was pending at the time when the application for extension of time for continuing the investigation was filed by the prosecution. In our view, the right of the appellant to grant of statutory bail remained unaffected by the subsequent application and both the Chief Metropolitan Magistrate and the High Court erred in holding otherwise.”

18. Now, another aspect of the matter is to be considered, inasmuch as the authority in the case of Sanjay Dutt (supra) has revealed that the Apex Court while making an observation on the merits of the case of Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602, has at para 48 opined that “...*The Division Bench also indicated that if there be such an application of the accused for release on bail and also a prayer for extension of time to complete the investigation according to the proviso in Section 20(4)(bb), both of them should be considered together. It is obvious that no bail can be given even in such a case unless the prayer for extension of the period is rejected. In short, the grant of bail in such a situation is also subject to refusal of the prayer for extension of time, if such a prayer is made...*”.

19. To further qualify this observation or opinion, a three Judge bench of the Supreme Court in the case of M. Ravindran (supra) at para 14.1 has observed as follows:

“14.1. The observations made in Hitendra Vishnu Thakur (supra) and Sanjay Dutt (supra) to the effect that the application for default bail and any application for extension of time made by the Public Prosecutor must be considered together are, in our opinion, only applicable in situations where the Public



Prosecutor files a report seeking extension of time prior to the filing of the application for default bail by the accused. In such a situation, notwithstanding the fact that the period for completion of investigation has expired, both applications would have to be considered together. However, where the accused has already applied for default bail, the Prosecutor cannot defeat the enforcement of his indefeasible right by subsequently filing a final report, additional complaint or report seeking extension of time.”

20. What has emerged from the above proposition is that even if the statutory period has expired and an indefeasible right of default bail is available to the accused, an application in such regard has to be filed before the court concerned. Again, if there is also an application filed by the prosecution seeking extension of time, the Court may hear both the applications simultaneously, however the court can do so only if the application for extension of time is filed first in point of time.

21. In the case of the petitioner, admittedly, the application for extension of time was filed on the 180th day, while the application for default bail was filed two days hence. Therefore, the fact that the trial court has considered both application on the same day and an order dated 18.07.2023 was also passed on the same day cannot be faulted.

22. Following the observations in the case of Sanjay Dutt (supra) at para 48, the application for extension of time being allowed by the trial court, rejection of the application for grant of default bail is therefore found justified.

23. As to the alleged illegality of the impugned order allowing the extension of time with retrospective effect, that is, w.e.f. 13.07.2023, this Court would agree that the same is not founded on settled principles of law in this regard, however, the same will not have much bearing on the



facts and circumstances of the case of the parties inasmuch as by this time, the chargesheet have already been filed and the case has proceeded in due course.

24. Under such circumstances, this Court is of the considered opinion that the impugned order was passed keeping the accepted principle of law intact. There is no infirmity in the same.

25. Resultantly, this petition is found to be devoid of merits and the same is hereby dismissed.

26. Petition disposed of. No costs.

Judge