

GAHC040008272024



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

Case No. : BA/67/2024

Mingge Gammeng
Son of Shri Printom Gammeng,
presently residing at Polo Colon,
Naharlagun,
PO and PS Naharlagun,
Papaumpare District,
Arunachal Pradesh

VERSUS

The State of AP
represented by the Special PP (SIC)

Advocate for the Petitioner : Mr. P. K. Tiwari Sr. Adv.
Mr. Kamal Saxena

Advocate for the Respondent : Ojing Pada

**BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 31-07-2024

Heard Mr. P. K. Tiwari, learned Senior counsel assisted by Mr. K. Saxena, learned counsel of the petitioner. Also heard Mr. O. Pada, learned Special Public Prosecutor for the SIC (Vigilance).

2. This is an application under Section 439 of Cr.P.C. filed by the applicant, Shri Mingge Gammeng for grant of bail to the accused, namely, Shri Talem Jamoh in connection with SIC (VIG) P.S. Case No. 09/2023, registered under Sections 120(B)/409/420/468/471 of IPC, *read with* Section 13(2) of the Prevention of Corruption Act, 1988.

3. The case diary has been received. I have heard from both sides.

4. Mr. Tiwari, learned Senior Counsel, has submitted that, as per the information available to date, the Investigating Officer (IO) has not furnished the charge-sheet despite the lapse of the statutory period of 90 days. To date, the accused has been in custody for 92 days, including 15 days of police remand, since 01.05.2024. Therefore, the accused is entitled to default bail under Section 167(2) of the Cr.P.C. It is further submitted that default bail can be granted even on an oral application.

5. In addition to his submission, he relies on the decision of the Apex Court reported in ***2020 (10) SCC 616 [Bikramjit Singh vs. The State of Punjab]***, emphasizing paragraph No. 27 of the judgment, which reads as follows:

Paragraph-27: In a fairly recent judgment reported as Rakesh Kumar Paul v. State of Assam (2017) 15 SCC 67, a Three-Judge Bench of this Court referred to the earlier decisions of this Court and went one step further. It was held by the majority judgment of Madan B. Lokur, J. and Deepak Gupta, J. that even an oral application for grant of default bail would suffice, and so long as such application is made before the charge sheet is filed by the police, default bail must be granted. This was stated in Lokur, J.'s judgment as follows:

"37. This Court had occasion to review the entire case law on the subject in Union of India v. Nirala Yadav [Union of India v. Nirala Yadav, (2014) 9 SCC 457 : (2014) 5 SCC (Cri) 212] . In that decision, reference was made to Uday Mohanlal Acharya v. State of Maharashtra [Uday Mohanlal Acharya v. State of Maharashtra, (2001) 5 SCC 453 : 2001 SCC (Cri) 760] and the conclusions arrived at in that decision. We are concerned with Conclusion (3) which reads as follows: (Nirala Yadav case [Union of India v. Nirala Yadav, (2014) 9 SCC 457 : (2014) 5 SCC (Cri) 212] , SCC p. 472, para 24)

"13. (3) On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate.' (Uday Mohanlal case [Uday Mohanlal Acharya v. State of Maharashtra, (2001) 5 SCC 453 : 2001 SCC (Cri) 760] , SCC p. 473, para 13)"

38. This Court also dealt with the decision rendered in Sanjay Dutt [Sanjay Dutt v. State, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] and noted that the principle laid down by the Constitution Bench is to the effect that if the charge-sheet is not filed and the right for "default bail" has ripened into the status of indefeasibility, it cannot be frustrated by the prosecution on any pretext. The accused can avail his liberty by filing an application stating that the statutory period for filing the charge-sheet or challan has

expired and the same has not yet been filed and therefore the indefeasible right has accrued in his or her favour and further the accused is prepared to furnish the bail bond.

39. This Court also noted that apart from the possibility of the prosecution frustrating the indefeasible right, there are occasions when even the court frustrates the indefeasible right. Reference was made to Mohd. Iqbal Madar Sheikh v. State of Maharashtra [Mohd. Iqbal Madar Sheikh v. State of Maharashtra, (1996) 1 SCC 722 : 1996 SCC (Cri) 202] wherein it was observed that some courts keep the application for “default bail” pending for some days so that in the meantime a charge-sheet is submitted. While such a practice both on the part of the prosecution as well as some courts must be very strongly and vehemently discouraged, we reiterate that no subterfuge should be resorted to, to defeat the indefeasible right of the accused for “default bail” during the interregnum when the statutory period for filing the charge-sheet or challan expires and the submission of the charge-sheet or challan in court.

Procedure for obtaining default bail

40. In the present case, it was also argued by the learned counsel for the State that the petitioner did not apply for “default bail” on or after 4-1-2017 till 24-1-2017 on which date his indefeasible right got extinguished on the filing of the charge-sheet. Strictly speaking, this is correct since the petitioner applied for regular bail on 11-1-2017 in the Gauhati High Court- he made no specific application for grant of “default bail”. However, the application for regular. bail filed by the accused on 11-1-2017 did advert to the statutory period for filing a charge-sheet having expired and that perhaps no charge-sheet had in fact being filed. In any event, this issue was argued by the learned counsel for the petitioner in the High Court and it was considered but not accepted by the High Court. The High Court did not reject the submission on the ground of maintainability but on merits. Therefore it is not as if the petitioner did not make any application for default bail — such an application was definitely made (if not in writing) then at least orally before the High Court. In our

opinion, in matters of personal liberty, we cannot and should not be too technical and must lean in favour of personal liberty. Consequently, whether the accused makes a written application for "default bail" or an oral application for "default bail" is of no consequence. The court concerned must deal with such an application by considering the statutory requirements, namely, whether the statutory period for filing a chargesheet or challan has expired, whether the charge-sheet or challan has been filed and whether the accused is prepared to and does furnish bail.

41. We take this view keeping in mind that in matters of personal liberty and Article 21 of the Constitution, it is not always advisable to be formalistic or technical. The history of the personal liberty jurisprudence of this Court and other constitutional courts includes petitions for a writ of habeas corpus and for other writs being entertained even on the basis of a letter addressed to the Chief Justice or the Court.

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Application of the law to the petitioner

45. On 11-1-2017 [Rakesh Kumar Paul v. State of Assam, 2017 SCC OnLine Gau 573] when the High Court dismissed the application for bail filed by the petitioner, he had an indefeasible right to the grant of "default bail" since the statutory period of 60 days for filing a charge-sheet had expired, no charge-sheet or challan had been filed against him (it was filed only on 24-1-2017) and the petitioner had orally applied for "default bail". Under these circumstances, the only course open to the High Court on 11-1-2017 was to enquire from the petitioner whether he was prepared to furnish bail and if so then to grant him "default bail" on reasonable conditions. Unfortunately, this was completely overlooked by the High Court.

46. It was submitted that as of today, a charge-sheet having been filed against the petitioner, he is not entitled to "default bail" but must apply for regular bail — the "default bail" chapter being now closed. We

cannot agree for the simple reason that we are concerned with the interregnum between 4-1-2017 and 24-1-2017 when no charge-sheet had been filed, during which period he had availed of his indefeasible right of "default bail". It would have been another matter altogether if the petitioner had not applied for "default bail" for whatever reason during this interregnum. There could be a situation (however rare) where an accused is not prepared to be bailed out perhaps for his personal security since he or she might be facing some threat outside the correction home or for any other reason. But then in such an event, the accused voluntarily gives up the indefeasible right for default bail and having forfeited that right the accused cannot, after the chargesheet or challan has been filed, claim a resuscitation of the indefeasible right. But that is not the case insofar as the petitioner is concerned, since he did not give up his indefeasible right for "default bail" during the interregnum between 4-1-2017 and 24-1-2017 as is evident from the decision of the High Court rendered on 11-1-2017 [Rakesh Kumar Paul v. State of Assam, 2017 SCC OnLine Gau 573] . On the contrary, he had availed of his right to "default bail" which could not have been defeated on 11-1-2017 and which we are today compelled to acknowledge and enforce.

47. Consequently, we are of the opinion that the petitioner had satisfied all the requirements of obtaining "default bail" which is that on 11-1-2017 he had put in more than 60 days in custody pending investigations into an alleged offence not punishable with imprisonment for a minimum period of 10 years, no charge-sheet had been filed against him and he was prepared to furnish bail for his release, as such, he ought to have been released by the High Court on reasonable terms and conditions of bail.

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49. The petitioner is held entitled to the grant of "default bail" on the facts and in the circumstances of this case. The trial Judge should release the petitioner on "default bail" on such terms and conditions as may be reasonable. However, we make it clear that this does not prohibit

or otherwise prevent the arrest or re-arrest of the petitioner on cogent grounds in respect of the subject charge and upon arrest or re-arrest, the petitioner is entitled to petition for grant of regular bail which application should be considered on its own merit. We also make it clear that this will not impact on the arrest of the petitioner in any other case.”

6. On the other hand, Mr. Pada, learned Special Public Prosecutor, has submitted that there is sufficient incriminating material available in the case diary against the accused. However, it is a fact that the accused has been in custody since 01.05.2024 and the Investigating Officer (IO) has not yet filed the charge-sheet and the case is still at the investigation stage. Accordingly, he has raised no objection in allowing the prayer made on behalf of the accused person considering the fact that he has completed his statutory period.

7. After hearing the submissions of learned counsel for both sides, it is observed that, despite the lapse of the statutory period, the investigating authority has not filed the charge-sheet against the accused. The accused has been in custody for the past 91 days, and the charge-sheet remains unfurnished. Considering the views of the Apex Court, I find that the accused, Shri Talem Jamoh, is entitled to default bail. Accordingly, the accused, namely, Shri Talem Jamoh is allowed to go on bail on furnishing a bail bond of Rs.50,000/- (Rupees Fifty thousand) only with two sureties of like amount to the satisfaction of the learned Special Judge, (PC Act), Yupia, in connection with SIC (VIG) P.S. Case No. 09/2023, registered under Sections 120(B)/409/420/468/471 of IPC, *read with* Section 13(2) of the Prevention of Corruption Act, 1988.

9. The above privilege is, however, subject to the following conditions:-

- (1) The accused shall co-operate in the investigation as and when called/summoned for the investigation;
- (2) The accused shall not hamper/tamper with the evidence of the prosecution witnesses or the investigating agency; and
- (3) The accused shall not leave the territorial jurisdiction of learned Special Judge, (PC Act), Yupia, without prior permission.

10. In view of the above, this Bail application stands disposed of.

JUDGE

Comparing Assistant