



THE GAUHATI HIGH COURT

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

PRINCIPAL SEAT AT GUWAHATI

Criminal Petition No. 523 of 2023

Umar Faruque,
S/o –Gias Uddin,
Resident of Village-Kalachar Part-V,
P.S.- Kachakata,
District- Kurigram, Bangladesh.

...PETITIONER

VERSUS

- 1. The State of Assam;**
- 2. Shri Trilochan Das,**
S/O Hema Kanta Das,
S.I. of Gauripur Police Station,
PO & PS-Gauripur,
Dist.-Dhubri, Assam, 783331.

...RESPONDENTS

...BEFORE...

HON'BLE MR. JUSTICE ROBIN PHUKAN

Advocate for the Petitioner

: Mr. S. Islam, Adv.

Advocate for the Respondent No.1

: Mr. P.S. Lahkar, Addl. P.P.

Date of Hearing : 26.09.2022

Date of Judgment : 19.02.2024

JUDGMENT AND ORDER

Heard Mr. S. Islam, learned counsel for the petitioner and also heard Mr. P.S. Lahkar, Addl. P.P. for the respondent No.1. None appeared for respondent No.2.

2. In this petition, under Sections 482 of the Code of Criminal Procedure, the petitioner, namely Umar Faruque has put to challenge the correctness or otherwise of the order dated 27.02.2023, passed by the learned Sessions Judge, Dhubri, in Sessions Case No. 56/2021. It is to be noted here that vide impugned order dated 27.02.2023, the learned Sessions Judge, Dhubri has rejected the petition filed by the petitioner for filing bail bond as per order dated 16.08.2021 passed by the learned Chief Judicial Magistrate, Dhubri.

3. The factual background, leading to filing of the present petition, is briefly stated as under:

“On the basis of an FIR lodged by S.I. Trilochan Das of Gauripur P.S. with the O/C Dhubri P.S. on 16.05.2021, the present petitioner, along with two other accused namely, Amir Ali, Sah Alam Seikh was arrested by police and forwarded to jail hazoot. The essence of allegation against them is that they were dealing

with the business of fake Indian Currency Notes and a sum of Rs.1,00,000/ of suspected fake Indian Currency Notes were recovered from the house premises of Amir Ali. Upon the said FIR the O/C Dhubri Police Station has registered a case being Dhubri P.S. Case No. 796/2021 and got the investigation carried out. But, within the stipulated period of 90 days the I.O. of the case had failed to file charge sheet and therefore the learned Chief Judicial Magistrate, Dhubri, vide order dated 16.08.2021, granted the present petitioner default bail and allowed him to go on bail of Rs. 20,000/ with one surety of like amount. But, the petitioner had failed to file bail bond for which he has been languishing in jail hazoot. In the meantime, the I.O. had completed investigation and submitted charge sheet being charge sheet No. 732/2021 against the petitioner under sections 120-B/489-A/489-C read with section 14-A of the Foreigners Act. Upon the said FIR the learned court below had taken cognizance of the offences, and upon commitment of the case to the Court of Sessions, the learned Sessions Judge, Dhubri had framed charge against him under sections 120-B/489-A/489-B/489-C IPC read with section 14-A(a)(b)/14(c) of the Foreigners Act and examined several witnesses. Thereafter, on 27.02.2023, one Motiyar Rahman had filed a petition to accept bail bond in respect of the present petitioner. But, the learned court below had dismissed the petition.”

4. Being highly aggrieved, the petitioner has preferred this present petition, under section 482 Cr.P.C. and contended to set aside the impugned order on the following grounds:-

- (i) That, the petitioner was granted default bail by the learned Chief Judicial Magistrate, Dhubri on the ground of failing to file charge sheet by the I.O. within stipulated period, but, the learned Sessions Judge, Dhubri had misinterpreted the provision of law and rejected the petition;
- (ii) That, before filing of the charge sheet the petitioner could not furnish his bail bond but, as the petitioner was granted default bail the said order would remain in force and he can file bail bond at any point of time and no fresh order is necessary and as such the impugned order failed to withstand legal scrutiny;

5. Mr. S. Islam, the learned counsel for the petitioner, besides reiterating the points mentioned herein above, submits that the learned Sessions Judge, Dhubri had misinterpreted the provision of law. Mr. Islam further submits that the petitioner was granted the privilege of default bail by the learned Chief Judicial Magistrate, Dhubri, the same would remain in force and subsequent filing of charge sheet would not extinguish the indefeasible right of the petitioner. And as there exist an order granting bail to the petitioner, his right to file bail bond still exist and on such count no fresh order is necessary and therefore, it is contended to allow this petition.

6. Per contra, Mr. P.S. Lahkar, the learned Addl. P.P., submits that though the petitioner was granted default bail on account of failing to

file charge sheet by the I.O. within stipulated period, after filing of charge sheet by the I.O. before petitioner furnishing bail bond his right to be released on bail extinguished. And as such, according to Lahkar, the impugned order suffers from no infirmity requiring any interference of this court, and therefore, it is contended to dismiss the petition. Mr. Lahkar also referred to a decision of Hon'ble Supreme Court in **M. Ravindran vs. Intelligence Officer, Directorate of Revenue Intelligence**, reported in **(2021) 2 SCC 485**, in support of his submission.

7. Having heard the submission of learned counsel of both sides, I have carefully gone through the petition and the documents placed on record. Also, I have gone through the scanned copy of the record received from the learned court below.

8. In the case in hand, the facts discussed herein above has not been disputed by any of the parties. The only law point to be decided here in this petition is whether right of the petitioner to furnish bail bond, after granting of default bail by the learned Chief Judicial Magistrate, Dhubri on account of failing to submit charge sheet by the I.O. and to be released, exists after subsequent filing of charge sheet or not.

9. This issue has aptly been decided by the Hon'ble Supreme Court in the case of **M. Ravindran** (supra). In the said case, the issue of bail under Section 167(2) Cr.P.C. fell for consideration of this Court in **M. Ravindran** (supra). In the said case, the appellant was arrested and remanded to judicial custody on 04.08.2018, for offences

punishable under the Narcotics Drugs and Psychotropic Substances Act, 1985. On 01.02.2019, the appellant therein filed an application for bail under Section 167(2) on the ground that investigation was not complete and charge-sheet had not been filed within the statutory period. The trial court granted bail under Section 167(2), which was set aside by the High Court of Madras, by judgment dated 21.11.2019. Challenging the said judgment of the High Court, the appellant approached before the Hon'ble Supreme Court. The crucial fact in the said case is that the appellant therein filed an application on 01.02.2019 at 10.30 a.m. before the trial court and on the same day at 4.25 p.m., an additional complaint was filed against the appellant, on the basis of which dismissal of the bail application was sought. The Hon'ble Supreme Court had restored the order of the trial court while setting aside the judgment of the High Court, by holding that the accused is deemed to have "availed of" or enforced his right to be released on default bail, once application for bail has been filed under Section 167(2) on expiry of the stipulated time period, taking into account the fact that before the expiry of 180 days, no charge-sheet had been submitted nor any application has been filed seeking extension of time to investigate. Then the Hon'ble Supreme Court held that the appellant was entitled to be released on statutory bail notwithstanding the subsequent filing of an additional complaint. The point that was decided in the said case was that the filing of an additional complaint after the accused has availed his right to be released on default bail, should not deter the courts from enforcing

this indefeasible right, if the charge-sheet was not filed before the expiry of the statutory period.

10. The relevant paragraph of the judgment in **M. Ravindran** (supra) is reproduced herein below:-

"25.1. Once the accused files an application for bail under the proviso to Section 167(2) he is deemed to have "availed of" or enforced his right to be released on default bail, accruing after expiry of the stipulated time-limit for investigation. Thus, if the accused applies for bail under Section 167(2) CrPC read with Section 36-A(4), NDPS Act upon expiry of 180 days or the extended period, as the case may be, the court must release him on bail forthwith without any unnecessary delay after getting necessary information from the Public Prosecutor, as mentioned supra. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigating agency.

25.2. 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 charge-sheet or a report seeking extension of time by the prosecution before the court; or filing of the charge-sheet during the interregnum when challenge to the rejection of the bail application is pending before a higher court.

11. As herein this case, the petitioner has filed an application for granting default bail after failing to file charge sheet within stipulated period by the I.O. and as the learned Chief Judicial Magistrate, Dhubri had granted him default bail, had availed his indefeasible right. But he could not file bail bond. Thus, relying upon the ratio, so laid down in the case of **M. Ravindran** (supra) it can safely be concluded that the right of the petitioner to be released on bail on furnishing bond shall continue to exist and remain enforceable if the petitioner desires to

submit bail bond. Subsequent filing of charge sheet will never extinguish such indefeasible right. But, the learned Sessions Judge, Dhubri had dismissed the petition on the ground that the petitioner could not furnish bail bond till filing of charge sheet, and thereafter no bail order for the petitioner has been passed.

12. Thus, having tested the impugned order on the touchstone of the principles discussed herein above, this court is of the considered opinion that the same failed to withstand the legal scrutiny and as such this petition deserves to be allowed. Once an order of default bail has been passed and having failed to furnish bail bond before filing of charge sheet, there is no legal requirement to pass a fresh order.

13. In the result, I find sufficient merit in the present Criminal Petition, and accordingly, the same stands allowed. Accordingly, the impugned order dated 27.02.2023, passed by the learned Sessions Judge, Dhubri, in Sessions Case No. 56/2021 stands set aside. It is provided that on furnishing suitable surety in terms of order dated 16.08.2021, so passed by the learned Chief Judicial Magistrate, Dhubri, subject of course to the satisfaction of the learned Sessions Judge, Dhubri, the petitioner shall be enlarged on bail. The parties have to bear their own costs.

JUDGE

Comparing Assistant

