

GAHC010126852024



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

Case No. : Bail Appln./1825/2024

ANISUR SIKDAR @ ANISHUR SIKDAR
S/O ABDUL KHALEK SIKDAR,
RESIDENT OF VILLAGE 3 NO. BALADMARI CHAR, PS MORNAI, DIST
GOALPARA, ASSAM 783121

VERSUS

THE STATE OF ASSAM
REP BY THE PP ASSAM

Advocate for the Petitioner : MR. G SAHU

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

18.07.2024

Heard Mr. G. Sahu, learned counsel for the petitioner. Also heard Mr. K. K. Parasar, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 439 of the Code of Criminal Procedure, 1973 for grant of bail to the accused/petitioner, who has been arrested in connection with Mornai P.S. Case No. 24/2024, under Sections 21(b)/29 of the NDPS Act, 1985.

3. Scanned copy of the case record has already been received. Perused the same. Heard both sides.

4. It is submitted by Mr. Sahu, learned counsel for the petitioner, that the prayer of the petitioner for default bail was rejected by the learned Court below vide order dated 31.05.2024, passed in Misc. CrI. No. 218/2024, with the observation that the I.O. filed the part Charge-Sheet within the statutory period of 60 days. However, it is observed by the learned Court below that the FSL report was not collected by the I.O. and hence, the Charge-Sheet was returned back with a direction to file the Charge-Sheet in a proper form. Further, when the accused/petitioner applied for the certified copy of the Charge-Sheet, the Office of the learned Court below had made a note on 21.06.2024 stating that the Charge-Sheet is not available. The learned counsel for the petitioner accordingly submitted that at the time of rejecting the prayer for default bail, the FSL report was not on record and it was considered to be a part Charge-Sheet. In this regard, he relied on a decision of Apex Court passed in **Sharif Ahmed & Anr. Vs. State of Uttar Pradesh & Anr., [(2004) 4 SCC 224]**,

wherein, the Apex Court has laid down some important points, which are as follows:

- (1) Contents of charge-sheet -Charge-sheet is complete when it refers to material and evidence sufficient to take cognizance and for trial – Nature and standard of evidence to be elucidated in a charge-sheet should prima facie show that an offence is established if material and evidence is proven.
- (2) Role played by accused in crime should be separately and clearly mentioned in charge-sheet, for each of the accused persons.
- (3) Mere expression of any words without any intent to cause alarm would not be sufficient to bring home an offence under Section 506 of the IPC.
- (4) Exemption from personal appearance – Power to grant exemption from personal appearance under Cr.P.C. should not be read in a restrictive manner as applicable only after the accused has been granted bail.

5. The learned counsel for the petitioner further submitted that the matter is pending before the Larger Bench of the Apex Court for opinion as to whether the failure on the part of the prosecution to include the FSL report pertaining to the seized contraband article(s) along with the Charge-Sheet, within the time specified in Section 167 (2) of the Cr.P.C. *read with* Section 36A of the NDPS Act, would entitle the accused to default bail or not.

6. Accordingly, he submitted that at the time of filing the Charge-Sheet, there was no sufficient material to take cognizance for trial as the FSL report, which is an important document, was not in the Charge-Sheet or the I.O. did not

collected the FSL report at the time of filing the Charge-Sheet. More so, he submitted that it is a case of intermediate quantity and the accused is behind the bar since 03.04.2024 and hence, considering his length of detention also, he may be enlarged on bail and in the same time, as the case being the intermediate quantity, the rigor of Section 37 will also not follow.

7. In this context, Mr. Borthakur, learned Additional Public Prosecutor, has submitted that it is a fact that at the time of filing of the Charge-Sheet, the FSL report was not collected by the I.O. and it was collected subsequently and submitted before the learned Court below. In the same time, he submitted that admittedly the case falls under the intermediate quantity and accordingly, the length of detention may be considered for the accused/petitioner.

8. Considering the submissions made by the learned counsels for both sides, I have also perused the scanned copy of the case record as well as the order dated 31.05.2024, passed by the learned Special Judge, Goalpara, in Misc. CrI. No. 218/2024.

9. From the order passed by the learned Special Judge, it reveals that at the time of rejecting the prayer for default bail, the FSL report was not available before the Court and for which, the Charge-Sheet was returned to I.O. with a direction to file the Charge-Sheet in a proper form. However, on perusal of the Charge-Sheet, it is seen that the Charge-Sheet, which is received along with the scanned copy of the LCR, is dated 29.05.2024, wherein the I.O. made a note that the matter is sent for FSL examination and accordingly, the FSL report was collected and the Charge-Sheet was filed against the present petitioner. But, surprisingly, the FSL report was collected by the I.O. only on 04.06.2024, which is subsequent to the filing to the Charge-Sheet. In the same time, it is seen that the I.O. has not filed the subsequent Charge-Sheet in the proper form, though it

was directed by the learned Special Judge vide order dated 31.05.2024. As it is seen that the Charge-Sheet was admittedly filed without the FSL report and the matter is still pending before the Larger Bench of Apex Court to decide as to whether the failure of FSL report pertaining to the seized contraband along with Charge-Sheet would entitle the accused to default bail or not.

10. However, in the instant case, it is seen that the accused/petitioner is behind the bar since 03.04.2024 and hence, considering the length of detention already undergone by the accused, I find it a fit case to allow the accused/petitioner to release on bail.

11. Accordingly, it is provided that on furnishing a bond of Rs. 20,000/- (Rupees twenty thousand) only with 2 (two) sureties sureties of like amount to the satisfaction of the learned Special Judge, Goalpara, the accused/petitioner, namely, Anisur Sikdar @ Anishur Sikdar, be enlarged on bail, subject to the following conditions:

- (i) that the petitioner shall make himself available for interrogation by the Investigating Officer as and when required;
- (ii) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and
- (iii) that the petitioner shall not leave the jurisdiction of the learned Special Judge, Goalpara, without prior permission.

12. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant