

GAHC010144992024



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

Case No. : Bail Appln./2136/2024

NEUTON DAS AND 6 ORS
S/O LATE BABUL DAS, R/O VILL- GARRIAGE COLONY, P.S.-EAST
DIMAPUR, DIST- DIMAPUR (NAGALAND)

2: MURSHID ALI
S/O LATE ABDUL ALI
R/O VILL- SUTIRPHAR
P.S.-BOLMARI
DIST- MORIGAON (ASSAM)

3: BIPUL DAS
S/O HARI DAS
R/O DEOBALI BLOCK
P.S.- 01 NO. KAKI
DIST- HOJAI (ASSAM)

4: MUKESH KUMAR
S/O RAMAPRASAD SAHANI
VILL- DARWA
P.S.-PATORI
DIST- SAMASTIPUR (BIHAR)

5: ANUWAR HUSSAIN
S/O LATE NAZIM UDDIN
R/O DABOKA BAZAR
P.S.-DABOKA
DIST- HOJAI (ASSAM)

6: SHANKAR DUTTA
S/O LATE ANUP DUTTA
R/O LUMTHI COLONY DIMAPUR
DIST- DIMAPUR (NAGALAND)

7: DILWAR HUSSAIN

S/O LATE ABDUL MANNAN
R/O 1 NO. MADHUPUR
P.S.-KAKI
DIST- NAGAON (ASSAM)

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : F K R AHMED, MRS. H THAKURIA, M U BARBHUYAN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

10.09.2024

1. Heard Mr. F. K. R. Ahmed, learned counsel appearing for the petitioner and Mr. M. P. Goswami, learned Additional Public Prosecutor for the State.
2. This is an application made under **Section 187(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023**, praying for release of the accused persons namely, **(1) Neuton Das, (2) Murshid Ali, (3) Bipul Das, (4) Mukesh Kumar, (5) Anuwar Hussain, (6) Shankar Dutta and (7) Dilwar Hussain**, on default bail who are presently in custody in connection with **NDPS Case No. 51/2024 arising out of Lumding GRPS Case No. 120/2023 registered under Section 120(B)/379/411/34 of IPC read with Section 21(C)/29 of NDPS Act, 1985.**
3. The contention of the accused-petitioners is that after their apprehension, they were produced before the Court of learned Special

Judge, Sankardev Nagar, Hojai on 11.09.2023. It is also the contention of the accused-petitioners that statutory period of 180 days to complete the investigation from 11.09.2023 expired on 08.03.2024. As the investigation of the case was not complete till 08.03.2024, a petition seeking bail under Section 167[2], CrPC was submitted before the learned Special Judge, Sankardev Nagar, Hojai on 08.03.2024 and the said petition, Petition no. 1032/2024 was considered by the learned Special Judge, Sankardev Nagar, Hojai on 11.03.2024. The learned Special Judge, Sankardev Nagar, Hojai has, however, rejected the petition on the premise that the Investigating Officer [I.O.] of the case had sought extension of time to complete the investigation, by making a prayer under sub-section [4] of Section 36[A] of the NDPS Act.

4. It is the contention of Mr. Ahmed, learned counsel for the accused-petitioners that the I.O. of the case had submitted the application to extend the period of investigation only on 11.03.2024, which was beyond 180 days from the date of arrest of the accused-petitioners and as such, the accused-petitioners were entitled to default bail on 11.03.2024.

5. Mr. Ahmed, the learned counsel for the petitioners further argues that the accused/petitioners are entitled for default bail as no order granting extension of time was passed and in the meantime, the petitioners have ascertained their right for default bail by filing appropriate application.

6. However, Mr. Goswami, learned Additional Public Prosecutor has, while, defending the order dated 11.03.2024 passed by the learned Special Judge, Sankardev Nagar, Hojai, contends that the application seeking extension of time was within the stipulated time period. It is further submitted by Mr. Goswami that the charge sheet in the case has been

submitted by the I.O. of the case on 29.03.2024. In support of such contention, Mr. Goswami, learned Additional Public Prosecutor relies on the decision of the Hon'ble Apex Court in the case of **Central Bureau of Investigation –Vs- Kapil Wadhawan & Anr** reported in **2024 SCC Online SC 66** and submits that after filing of the charge sheet, the right of the petitioners for default bail has been extinguished.

7. Mr. Goswami, the learned Additional Public Prosecutor further contends that the learned Judge has rightly rejected the prayer for default bail of the petitioners inasmuch as the Investigating Authority has filed an application for extension of time to complete the investigation and therefore, in the view of pendency of such application, the petitioner shall not have any indefeasible right to get default bail after completion of the statutory application of investigation of 180 days.

8. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the material available on record.

9. The facts which are necessary for determination of this present bail application are recorded herein below:-

I. The accused were produced before the learned Court below on 11.09.2023 and the accused were initially remanded to police custody and later on to judicial custody.

II. At the relevant point of time, procedure under Cr.P.C. was applicable. In terms of Section 167(2) Cr.P.C. read with Section 36A (4) of NDPS Act, 1985, the investigation is required to be completed and Final Form is to be filed within 180 days from the date of arrest.

III. In the case in hand, the aforesaid period of 180 days expired

on 08.03.2024 counting from the date of magisterial remand.

IV. On 08.03.2024, the petitioner filed an application seeking bail under Section 167(2) of the Cr.P.C. which was registered as Petition No. 1032/2024.

V. After expiry of such period, on 11.03.2024, the Public Prosecutor filed a petition before the learned Court below praying for extension of time beyond 180 days and for a reasonable period to enable the Investigating Officer to complete the investigation.

VI. Such application was rejected on the ground that the investigating officer had sought an extension of time to complete the investigation.

10. It is an admitted position that the period prescribed to complete the investigation under Section 36A(4) of NDPS Act read with Section 167(2) of Cr.P.C., was over on 08.03.2024 and admittedly, charge sheet was filed on 29.03.2024.

11. The fact also remains that the application seeking extension of time to complete the investigation was filed beyond the period time prescribed. The extension was granted on 11.03.2024. Thus, when the accused/petitioners preferred the bail application seeking statutory/default bail under Section 36A (4) of the NDPS Act read with Section 167(2) of Cr.P.C on 08.03.2024 on that day not only statutory period to complete the investigation was over but no charge sheet was filed, or any application seeking extension of time was pending on that day.

12. In terms of determination made by the Hon'ble Apex Court in **Jigar @ Jimmy Pravinchandra Aditya –Vs- State of Gujarat** reported in **MANU/SC/1233/2022**, an opportunity of hearing is required to be given

to the accused person before granting time to complete the investigation beyond 180 days and however, the learned Court has allowed the same on the date of filing itself inasmuch as such application for extension of time could not have been allowed immediately on filing without giving an opportunity of hearing to the petitioners.

13. The investigating authority ought to have filed such application well ahead of time seeking such extension and not beyond the expiry of statutory period, more particularly in view of the settled propositions of law that the accused is to be given an opportunity of hearing before passing an order on such application. In the case in hand, admittedly, the application for extension of time was filed on 11.03.2024 after expiry of 180 days.

14. By now it is well settled 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 extension application or subsequent filing of the charge-sheet or a report seeking extension of time by the prosecution before the Court. Such right, however, is subject to the condition that the accused has made an application for default bail, when the right accrues to him. When such right is not ascertained and a charge sheet is filed beyond statutory period or any time for completion of investigation is granted.

15. As discussed hereinabove, the petitioner's right to default bail accrued on 08.03.2024, the petitioner filed application for default bail on 08.03.2024. On the said date, no charge sheet was filed and an application for extension of time to complete the investigation was filed only on 11.03.2024 and therefore, notwithstanding filing of application for extension of time, the petitioner had an indefeasible right for grant of bail

on 08.03.2024.

16. Therefore, in view of the aforesaid settled proposition, the accused/petitioners were entitled for default bail when they ascertained such right by filing an application. Pendency of such application cannot take away the right of the petitioner to get default bail when the petitioners have ascertained their right by filing an application seeking default bail.

17. Therefore, rejection of the bail on the ground that the Public Prosecution filed a petition seeking extension of investigation period beyond 180 days and prior to filing of the bail petition by the accused for releasing them on the default bail, is not legally sustainable.

18. In view of the aforesaid discussion and settled propositions of law, the argument advanced by Mr. M. P. Goswami, donot find favour of this Court.

19. Accordingly, the accused, named above, shall be released on default bail in connection with the case aforementioned on furnishing bail bond of **Rs.1,00,000.00/- (one lakh)** with **two local suitable sureties each** of the like amount, to the satisfaction of learned Special Judge, NDPS Act, Sankardev Nagar, Hojai. The direction for bail is further subject to the conditions that the accused:

- (a) shall not leave the territorial jurisdiction of learned Special Judge, NDPS Act, Sankardev Nagar, Hojai, without prior written permission;
- (b) shall not hamper with the investigation of the case and tamper with the evidence of the case;
- (c) 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 them from disclosing such facts to the Court or to any police

officer.

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

JUDGE

Comparing Assistant