

GAHC010188822024



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

Case No. : Crl.Pet./1133/2024

SEIMINTHANG TOUTHANG AND ANR
S/O SOJANG TOUTHANG
VILL- JANGNOMPHAI
P.O, P.S. CHURACHANDPUR
DIST. CHURACHANDPUR, MANIPUR, PIN-795128

2: SRI SHOKHOHEN HAOKHOPAOSINGIST
S/O HAOKHOPAO SINGSIT
VILL- TUIBUONG
P.O. P.S. CHURACHANDPUR
MANIPUR
PIN-79512

VERSUS

THE UNION OF INDIA
CUSTOMS PREVENTIVE FORCE TO BE REPRESENTED BY ASST. SGT

Advocate for the Petitioner : MR. L R MAZUMDER, S W HUSSAIN

Advocate for the Respondent : SC, CUSTOMS, MR. S C KEYAL

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

18.09.2024

Heard learned counsel for the petitioner Mr L R Mazumdar, and learned Standing Counsel, Customs, Mr S C Keyal.

2. The petitioners, 1) Sri Seiminthang Touthang and 2) Sri Shokhohen Haokhopao Singist, have filed this application under Section 528 of the BNSS, 2023, challenging the order dated 20.05.2024, passed by the learned Special Judge, in connection with NDPS Case No. 62/2024 and also challenging the order dated 12.03.2024, passed in connection with the aforementioned case.

3. Vide order dated 12.03.2024, Petition No. 439(A)/40, dated 07.03.2024, with prayer for extending the period for another 90 days for further investigation was allowed. The IO had filed a petition through the engaged counsel of the concerned department on the 179th day of detention, for some more time for further investigation. The period of detention of the petitioners was extended to another 60 days. The impugned order dated 20.05.2024, was passed, rejecting the petition No. 604/7. The relevant part of the order impugned by the petitioners is reflected hereinbelow:-

“From perusal of the case record it appears that the petition No.439(A)/40 was filed on 07.03.2024. The accused persons were arrested on 11.09.2023. It is pertinent to mention here that in connection with this case 1897.58 gms of heroin was recovered from the vehicle of which the accused persons were the occupants. The petition No.439(A)/40 was filed on 178th day of detention of the accused persons and the same was allowed by the this court vide order dtd. 12.03.2024.

From perusal of the order dtd.7.03.2024 it appears that the copy of the said petition was not furnished to the defence but the detention period of the accused persons were extended vide order 12.03.2024 to another 60 days as further investigation was going on and the

complainant filed the petition No.439(A)/40 through the learned engaged counsel of the concerned department along with supporting documents.

Record further reveals that in- the-mean- time on 02.05.2024 the final complaint report (final charge-sheet) was submitted against the accused persons U/s 21(c)/22(c)/23(c)/25(a)/27(a)/28(a) of NDPS Act. The materials available on record reveals that on completion of 180 days of detention no petition was filed for granting default bail to the accused persons. Now, the defence has come up with the petition no.604/7 filed under section 439 Cr.P.C. r/w 37 of NDPS Act with a prayer to grant default bail to the accused persons on the ground that opportunity of hearing was not given to the accused persons at the time of extending the period of detention.

It is further pertinent to mention here that the instant petition No.604/7 has been filed long after the submission of charge-sheet in this case. The charge-sheet was submitted on 02.05.2024 and the instant petition No.604/7 has been filed on 17.05.2024. Prior to that on completion of 180 days of detention period no prayer was made for granting default bail to the accused persons and thereby right was not exercised by the accused persons for granting default bail. It is a fact that the copy of the petition which was filed for extension of the period of detention was not furnished to the accused persons and also that the accused persons have not exercised their right for granting default bail in proper time as stated already.

Under the above facts and circumstances, at this stage after filing of the charge-sheet the instant petition cannot be allowed which is filed under section 439 of Cr.P.C. r/w section 37 of NDPS Act.”

3. The learned counsel for the petitioners has relied on the decision of Hon'ble the Supreme Court in *Sanjay Kumar Kedia @ Sanjay Kedia –Vs- Intelligence Officer,*

Narcotics Control Bureau and Another; reported in (2009) 17 SCC 631, wherein it has been held and observed that-

“12. The maximum period of 90 days fixed under Section 167 (2) of the Code has been increased to 180 days for several categories of offences under the Act but the proviso authorizes a yet further period of detention which may in total go upto one year, provided the stringent conditions provided therein are satisfied and are complied with. The conditions provided are:

(1) a report of the public prosecutor,

(2) which indicates the progress of the investigation, and

(3) specifies the compelling reasons for seeking the detention of the accused beyond the period of 180 days, and

(4) after notice to the accused.

18. A bare perusal of this application shows that it has been filed by the investigating officer of respondent No.1 and does not indicate even remotely any application of mind on the part of the public prosecutor. It further does not indicate the progress of the investigation, nor the compelling reasons which required an extension of custody beyond 180 days. This application was allowed by the Special Judge on 2nd August, 2007 i.e. on the day on which it was filed which also reveals that no notice had been issued to the accused and

he was not even present in Court on that day.”

4. The learned Standing Counsel has relied on the decision of Hon’ble the Supreme Court in *Central Bureau of Investigation –Vs- Kapil Wadhawan*; reported in (2024) 0 AIR (SC) 905, wherein it has been held and observed that-

“15. There cannot be any disagreement with the well settled legal position that the right of default bail under Section 167(2) Cr.P.C. is not only a statutory right but is a right that flows from Article 21 of the Constitution of India. It is an indefeasible right, nonetheless it is enforceable only prior to the filing of the challan or the chargesheet, and does not survive or remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to the accused after the filing of the challan.....”

5. I have considered the submissions at the Bar with circumspection.

6. It is true that notice was not issued against the petitioner under Section 36 A (4) of the NDPS Act, to the detriment of the petitioner, but it cannot be ignored that the petitioners’ indefeasible right is enforceable only prior to the filing of the challan or the charge sheet and does not survive or remain enforceable on the challan being filed. In the instant case, charge sheet has already been submitted against the petitioners. There appears to be no error apparent in the order passed by the learned Special Judge,

warranting interference.

7. Therefore, petition is rejected.

JUDGE

Comparing Assistant