

GAHC010259722024



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

Case No. : I.A.(Crl.)/1220/2024

CENTRAL BUREAU OF INVESTIGATION
REP BY THE SC CBI

VERSUS

MONALISHA DAS
D/O SRI BHARAT DAS, R/O HOUSE NO. 3, MANDAKINI PATH, P.O.-
KHARGHULI, P.S.-LATASIL, GUWAHATI-781004, DIST-KAMRUP (M), ASSAM

Advocate for the Petitioner : BISWAJIT BARMAN,

Advocate for the Respondent : MR. M SAIKIA, MR. P SAIKIA (LEGAL AID COUNSEL)

Linked Case : Bail Appln./2970/2024

MONALISHA DAS
D/O SRI BHARAT DAS
R/O HOUSE NO. 3
MANDAKINI PATH
P.O.- KHARGHULI
P.S.-LATASIL
GUWAHATI-781004
DIST-KAMRUP (M)
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

2:THE CENTRAL BUREAU OF INVESTIGATION (CBI)
REPRESENTED BY SC
CBI

Advocate for : MR MINTU SAIKIA
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

14.02.2025

1. Heard learned Special Public Prosecutor, CBI, Mr. M. Haloi. Also heard learned counsel Mr. M. Saikia for the respondent and legal Aid Counsel Mr. P. Saikia.
2. This application has been filed by learned Special Public Prosecutor representing the CBI against the default bail order allegedly procured vide order dated 20.11.2024 by the respondent, Monalisha Das in connection with B.A. 2970/2024. It is submitted that charge-sheet was filed against the respondent before the statutory period of 90 days under Section 167(2) of the Cr.PC. It is submitted that the respondent has falsely submitted before this Court by misleading this Court that charge-sheet has not been filed beyond 90 days since 21.08.2024, when the respondent was arrested.
3. It is contended that the respondent has willfully and intentionally misled this

Court. It is alleged that the respondent No. 2 is one of the key conspirators of a massive and serious economic offence impacting thousands of innocent victims who were lured by her and her team under the garb of running an Unregulated Deposits Scheme by promising fixed higher returns on their deposits. It is further submitted that the respondent, Monalisha Das has not complied with the conditions of bail after procuring the bail order in connection with Panbazar P.S. Case No. 288/2024 registered under Sections 316(50/318(4)3(5) of the BNS, 2023.

4. Learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in ***T Gangireddy Vs. The CBI*** in connection with ***Criminal Appeal No. 37/2024*** wherein vide order dated 16.01.2023, it has been observed that :

“ 10. From the above, the law, which emerges is that mere filling of the chargesheet subsequent to a person is released on default bail under Section 167(2) Cr.P.C. cannot be a ground to cancel the bail of a person, who is released on default bail. However, on filing of the chargesheet on conclusion of the investigation, if a strong case is made out and on merits, it is found that he has committed a non-bailable offence/crime, on the special reasons/grounds and considering Section 437(5) and Section 439(2) Cr.P.C. over and above other grounds on which the bail to a person, who is released on bail can be cancelled on merits.

11. Therefore, there is no absolute bar as observed and held by the High Court in the Impugned judgment and order that once a person is released on default bail under Section 167(2) Cr.P.C. his bail cannot be cancelled on merits and his bail can be cancelled on other general grounds like tampering with the evidence/witnesses; not cooperating with the investigating agency and/or not cooperating with the concerned Trial Court etc.

12. As such, we are in complete agreement with the view taken by this Court in the aforesaid decisions. The submission on behalf of the respondent original Accused No. 1 and the view taken by the High Court in the impugned judgment and order that once an

accused is released on default bail under Section 167(2) Cr.P.C. his bail cannot be cancelled on merits is accepted, in that case, it will be giving a premium to the lethargic and/or negligence, may be in a given case of deliberate attempt on the part of the investigating agency not to file the chargesheet within the prescribed time period. In a given case, even if the accused has committed a very serious offence, may be under the NDPS or even committed murder(s), still however, he manages through a convenient investigating officer and he manages not to file the chargesheet within the prescribed time limit mentioned under Section 167(2) Cr.P.C. and got released on default bail, it may lead to giving a premium to illegality and/or dishonesty. As observed hereinabove, such release of the accused on default bail is not on merits at all, and is on the eventuality occurring in proviso to sub-section (2) of Section 167. However, subsequently on curing the defects and filing the chargesheet, though a strong case is made out that an accused has committed the very serious offence and non-bailable crime, the Court cannot cancel the bail and commit the person into custody and not to consider the gravity of the offence committed by the accused, the Courts will be loathe for such an interpretation, as that would frustrate the justice. The Courts have the power to cancel the bail and to examine the merits of the case in a case where the accused is released on default bail and released not on merits earlier. Such an interpretation would be in furtherance to the administration of justice. "

5. It is further submitted by the learned counsel for the petitioner that it has been held by the Hon'ble Supreme Court in ***Himanshu Sharma Vs. The State of Madhya Pradesh*** reported in ***(2024) INSC 139***, that a bail granted to an accused may be cancelled if the accused has misused the liberty granted to him and flouted the conditions of the bail order, and if the accused was granted bail in ignorance of the statutory provisions restricting the powers of the Court to grant bail and if the bail was procured by misrepresentation or flouting. It is submitted that the conduct of the respondent misrepresenting the Court and flouting the conditions are sufficient to cancel the bail granted to the respondent. Moreover, the respondent has misused her liberty. The petitioner has drawn the attention of this Court to the orders dated 11.12.2024 and

18.12.2024, whereby, notices were issued to the respondent. The order of the Court in this application dated 09.01.2025, clearly reflects that the respondent changed her address and notice could not be served upon her. This reflects the conduct of the respondent. A legal Aid Counsel was appointed vide order dated 21.01.2025, and the respondent was represented by the legal Aid Counsel. However, on a later date, Mr. M. Saikia who represented the respondent in B.A. 2970/2024, appeared before this Court. It is further submitted that the submissions of the learned counsel for the respondent Mr. M. Saikia are not at all acceptable.

6. Learned counsel for the respondent Mr. M. Saikia and legal Aid Counsel Mr. P. Saikia have submitted that when this order was passed by this Court in B.A. 2970/2024 on 20.11.2024, learned Special Public Prosecutor, CBI was present and after hearing both sides, it was observed by this Court that the respondent Monalisha Das was behind bars for 91 days and default bail was granted. Thus, it cannot be said that the respondent with malafide and by misleading this Court has procured the order of bail dated 20.11.2024 in B.A. 2970/2024. To this, learned Special Public Prosecutor has submitted that there is another I.A. registered as I.A. 1088/2024. Earlier, the investigation was carried on by the Police and so the respondent/opposite party was the State of Assam represented by the Public Prosecutor in B.A. 2970/2024. The respondent Monalisha Das procured the order in I.A. 1088/2024 to implead the CBI as respondent in B.A. 2970/2024. On the same day, the CBI was impleaded as respondent and the bail order was thus procured in a subterfuged manner by the respondent by misleading this Court that the statutory period had elapsed and the respondent was entitled to default bail, whereas in reality, charge-sheet was laid against the respondent before the expiry of the statutory period.

7. Scanned copies of the Case Diary reveals that charge-sheet was laid on 18.12.2024, being C.S. No. 44/2024, by the DYSP of the CBI under Sections 318(4)/316(5)/3(59 of the BNS, 2023 read with Section 21 of the Banning of Unregulated Deposits Scheme Act, 2019.
8. Further the learned counsel Mr. M. Saikia has submitted that the respondent r has changed her address and she has provided her address to the investigating team. This has been refuted by the learned Special Public Prosecutor, Mr. M. Haloi that the respondent has appeared in compliance of the bail conditions, only after this instant I.A. was filed against the respondent. The conduct of the respondent does not entitle her to bail and there is no bar to cancel the bail granted to the respondent considering her involvement in the offence. The offence alleged is an economic offence and the respondent has amassed wealth by inducing innocent civilians to deposit their hard earned money.
9. I have considered the submissions at the Bar with circumspection and I have also scrutinized the Case Diary.
10. The respondent has also left her address without prior permission and she was found to be untraceable and thus she has violated bail conditions.
11. However, I have considered the submission on behalf of the respondent by the learned counsel Mr. M. Saikia that the respondent has appeared before the investigating agency and she has provided her new address to the investigating team. Charge-sheet has already been submitted. It is submitted that the respondent will co-operate with the trial. It appears that cancellation of bail is

not required at this juncture.

12. The application for cancellation of bail is thereby dismissed with a direction to the respondent to comply with the conditions of bail as per the order dated 20.11.2024 in B.A. 2970/2024.

13. On breach of any of the bail conditions, the learned Trial Court is at liberty to immediately cancel the bail granted to the petitioner.

14. Send back the Case Diary to learned Special Public Prosecutor, Mr. M. Haloi.

15. Send a copy of this order to the learned Trial Court.

JUDGE

Comparing Assistant