

GAHC030004132024



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

Case No. : Bail Appln./60/2024

Hmangaihsanga
Serchhip, P and E Veng, Mizoram

VERSUS

State of Mizoram
Aizawl

Advocate for the Petitioner : Sh Ram Murmu

Advocate for the Respondent : P.P./Addl.PP, Mizoram

B E F O R E
HON'BLE MRS. JUSTICE MARLI VANKUNG
O R D E R

02.07.2024

Heard Mr. Ram Murmu, learned counsel for the applicant/petitioner along with Mrs. Linda L. Fambawl, learned Public Prosecutor for the State respondent.

2. This is an application filed under Section 439 Cr.P.C read with Section 167 Cr.P.C for the enlargement of the petitioner on bail.

3. The learned counsel submits that the petitioner was arrested on 18.03.2024 for the alleged commission of the offence punishable under Section 21(b) of ND & PS Act, 1985 and was remanded to judicial custody on 19.03.2024.

A case was registered against him at Serchhip PS case No.26/2024 and chargesheet was submitted on 20.05.2024.

4. The learned counsel submits that the petitioner had previously approached the learned Special Court ND & PS Act for the enlargement of the petitioner on bail under Section 167 Cr.PC since the petitioner was in judicial custody from 19.03.2024 to 19.05.2024 which is 60 days, as such, he had applied for release of the petitioner on default bail on 20.05.2024. The learned counsel submits that he had filed the bail application at 10:29 A.M. which was also noted and reflected by the learned trial court. He submits that the chargesheet was filed on the same day at 1:00 P.M. however, the applicant was remanded beyond the statutory period of 60 days and bail application was filed before the chargesheet was filed in the court, however, the learned trial court rejected the application for release on default bail and hence the instant bail application since the applicant is entitled to be released on bail as per section 167 Cr.PC.

5. In support of his submission, the learned counsel has relied on the Judgment & Order of the Apex Court in **Enforcement Directorate, Government of India Vs. Kapil Wadhawan & Anr etc.** reported in **2023 SCC OnLine SC 972**

6. The learned counsel for the petitioner also submits that the petitioner is a permanent resident of Serchhip, P&E Veng and therefore there is no likelihood absconding during the trial of the case. He further submits that there is no previous conditions against the petitioner.

7. Mrs. Linda L. Fambawl, learned Public Prosecutor submits that she has not received instruction till date but in all fairness submits that the facts of the case with regards to the time and the dates when the charge-sheet was filed and

when the bail application was filed before the learned Judge, Special Court, ND & PS Act, have been highlighted by the learned trial court in her order dated 21.05.2024 in Bail Application No.603/2024.

8. Having heard the submissions made by the learned counsels for both the parties and on perusal of the Order dated 21.05.2024 passed by the learned Judge, Special Court, ND & PS Act in Bail Application No.603/2024, it is seen that the learned trial court had observed that the petitioner was arrested on 18.03.2024 at 8:00 P.M. and produced before the court on 19.03.2024 and that the statutory period of 60 days lapse on 19.05.2024. That charge sheet was received by the court on 20.05.2024 at 1:00 P.M. while the Bail application was filed and was sent for registration on the same day at 10:59 A.M.

9. This court finds that the Apex Court in **Enforcement Directorate, Government of India Vs. Kapil Wadhawan & Anr etc.(Supra) para 50** has held that:

“50. Since there exists vacuum in the application and details of Section 167 CrPC, we have opted for an interpretation which advances the cause of personal liberty. The accused herein were remanded on 14.05.2020 and as such, the chargesheet ought to have been filed on or before 12.07.2020 (i.e. the sixtieth day). But the same was filed, only on 13.07.2020 which was the 61st day of their custody. Therefore, the right to default bail accrued to the accused persons on 13.07.2020 at 12:00 A.M, midnight, onwards. On that very day, the accused filed their default bail applications at 8:53 AM. The ED filed the chargesheet, later in the day, at 11:15 AM. Thus, the default bail Applications were filed well before the chargesheet. In Ravindran (supra) and Bikramjit (supra), which followed the Constitution Bench in Sanjay Dutt (supra) it was rightly held that if the accused persons avail their indefeasible right to default bail before the chargesheet/final report is filed. Then such

right would not stand frustrated or extinguished by any such subsequent filing. We therefore declare that the stipulated 60/90 day remand period under Section 167 CrPC ought to be computed from the date when a Magistrate authorizes remand. If the first day of remand is excluded, the remand period, as we notice will extend beyond the permitted 60/90 days' period resulting in unauthorized detention beyond the period envisaged under Section 167 CrPC. In cases where the chargesheet/final report is filed on or after the 61st/91st day, the accused in our considered opinion would be entitled to default bail. In other words, the very moment the stipulated 60/90 day remand period expires, an indefeasible right to default bail accrues to the accused."

10. In view of the above observation of the learned Apex Court this court finds that in the instant case, the bail application was filed by the petitioner before the charge sheet was filed and that at the time when the bail application was filed the petitioner was already in judicial custody for a period of 60 days.

11. In view of the above, this court, considering the observation and decision made by the Apex Court, find it fit to also grant bail to the petitioner, with a bail bond of Rs.50,000/- and with 2 (two) reliable sureties of the like amount, who shall be to the satisfaction of the learned Judge, Special Court, ND & PS Act.

12. The bail is also subject to the following bond/ conditions :

- 1) That the petitioner shall not commit any offence of the similar nature while on bail,
- 2) The petitioner will not interfere with the evidence or try to influence the prosecution witnesses during trial,
- 3) That the petitioner will not leave the state without premises permission of the trial court.

13. Accordingly, Bail Application./60/2024 stands allowed and disposed of.

JUDGE

Comparing Assistant