

GAHC030005532023



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

Case No. : Bail Appln./47/2023

Sh. Atikur Rahman @ Atique Rahman
S/o Achadur Rahman
R/o Karimganj, Assam.

VERSUS

Union of India and 2 Ors.
R/b Secretary, Ministry of Home Affairs, New Delhi.

2:Director General Narcotics Control Burreau

3:Zonal Director Narcotics Control Burrea

Advocate for the Petitioner : Mr. Lalbiaknunga Hnamte

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

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
ORDER

Date : 01-02-2024

Heard Mr. Lalbiaknunga Hnamte, learned counsel for the applicant, who has filed this bail application section 439 Cr.P.C. read with Section 37 of ND & PS Act, 1985 for enlargement of the applicant/petitioner on bail pending trial.

2. Mr. Lalbiaknunga Hnamte, learned counsel for the applicant submits that the

learned Special Court, under ND & PS Act had erred in not granting default bail to the applicant who filed the bail application on 08.08.2023 since the charge sheet was not filed within the extended time. He submits that in the Order passed by the learned trial court on 16.08.2023 in Bail Application No.1431/2023, the learned trial court had held that the extension of time was allowed on 02.05.2023 and charge sheet was filed on 03.08.2023. Hence, the petitioner was not entitled to default bail and accordingly dismissed the bail application.

3. The learned counsel for the applicant, however, submits that at the time of consideration of the matter, they were not aware that the charge sheet was actually received only on 11.08.2023 and they could not produced the documents which they are producing before this court today and annexed as annexure-6, in their bail application dated 08.08.2023. The learned counsel submits that annexure-6 is extract from the Register showing the receipt of charge sheet on dated 11.8.2023.

4. The learned counsel further submits that if the charge sheet was received by the Registry, District Court on 11.08.2023 then it is clear that charge sheet was submitted after the expiry of the extended time. The learned counsel thus submits that the applicant is entitled to be released on bail. In support of his submission he has cited the decision of the Apex court in **Bikramjit Singh Vs- The State of Punjab** in **Crl.Appl. No.667 of 2020.**

5. Mr. C. Zoramchhana, learned counsel for the respondents on the other hand submits that the sections under which the instant bail application has been filed are,

under Section 439 Cr.P.C read with Section 37 of ND & PS Act and not under Section 167 Cr.P.C for default bail. He submits that the order of the learned trial court in Bail Application No. 1431 of 2023 dated 08.08.2023 rejecting the prayer for release on default bail under Section 167 Cr.P.C is therefore not challenged before the Court. He further submits that an application under Section 439 Cr.P.C has to be first decided by the trial court and only after the applicants have exhausted their remedy before the trial court, that the applicants can approach this court. He further submits that they are handicapped to look into the legality of the impugned order dated 16.08.2023 passed under the provisions Section 167 Cr.P.C.

6. Mr. Lalbiaknunga Hnamte, learned counsel for the applicant in rebuttal submits that the Apex Court in **Bikramjit Singh Vs- The State of Punjab** in **Crl.Appl. No.667 of 2020** had already decided that the court can consider the prayer for default bail u/s 167 Cr.P.C even if it's a verbal submission.

7. Having heard the submissions made by the learned counsels for both the parties and on perusal of the documents on record, it is seen that the instant bail application is against the Order of the learned Trial Court in Bail Application No. 1431 of 2023 dated 08.08.2023 for not granting default bail under 167 Cr.P.C. This court finds that though the instant bail application was made under sections 439 Cr.P.C read with Section 37 ND & PS Act in view of the observation of the Apex Court in **Bikramjit Singh -Vs- The State of Punjab (Supra)** where it held that "in matters of personal liberty the court cannot be too technical and whether the accused makes a

written application for 'default bail' or an oral application for default bail is of no consequence", the instant submission for grant of default bail u/s 167 Cr.P.C. is heard.

8. On perusal of the impugned order dated 16.08.2023, it is seen that the learned Judge, Special Court, ND & PS Act, had observed that "*after careful perusal of the materials on record, extension of time for investigation was allowed by this court on 02.05.2023 and chargesheet was filed within the extended period. Thus, in view of the above stated reasons, this court do not find any reasons to allow the application*". The application was thus rejected.

9. This Court finds that at the time of considering the bail application filed on 08.08.2023, the submission made before the trial court was that charge sheet was filed on 03.08.2023 thus, it appeared from the submission made and materials available on record that charge sheet was filed within the extended time. As such, if that is the case, there will be no grounds to interfere with the observation and the order made by the learned Trial Court. However, considering the fact that the learned counsel for the applicant has now submitted that subsequent to the said order, they discovered that the charge sheet was actually submitted on 11.08.2023, after the extension of time have expired, by producing the xerox copy of the Court register annexed as Annexure-6. This court finds that there is a possibility that the factual situation was not be placed before the trial court.

10. For the above reasons, this Court finds it fit to exercise its inherent powers under section 482 Cr.P.C. and direct the learned Judge, Special Court under ND & PS

Act to consider the Bail Application dated 08.08.2023 afresh by giving opportunity to the learned counsels for the applicant/accused to file the documents on which they wish to rely on which was not made available for the learned Trial Court to consider, since it could not be produced before the learned Judge, ND & PS Act previously. For the above reasons, this Court finds that the ends of justice would be met if the order dated 16.08.2023 in Bail Application No.1431/2023 is set aside and the bail application is heard afresh, wherein the learned Judge, Special Court under ND & PS Act looked into the correctness and authenticity of the submission made that the charge sheet was file not on 03.08.2023 but on 11.08.2023, by hearing both the parties.

11. Accordingly, with the above directions, the Bail Application No. 47/2023 stands disposed of.

JUDGE

Comparing Assistant