

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

CRIL. PETN. No. 44 of 2025

Seitinlal Haokip

... Petitioner

- Versus -

Union of India

... Respondent

B E F O R E
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

O R D E R

16.09.2025

[1] Heard Mr. Serto T. Kom, learned counsel appearing through video conferencing for the petitioner and Mr. N. Brojendro, learned Special P.P. for DRI, Imphal assisted by Mr. N. Jasobanta, learned counsel.

[2] The petitioner who is accused in Special Trial Case No. 57 of 2023 (Ref.: 01/CL/NDPS/HEROIN/DRP/IMP/2023-24) under Sections 21(c), 23(c), 25, 29 & 60 of the ND & PS Act, 1985, was released on default bail by vide order dated 25.10.2023 under Section 167(2) of CrPC read with Section 36(A) of ND & PS Act on furnishing PR Bond of Rs. 5,00,000/- (Rupees five lakh) with 2(two) sureties of like amount by the Ld. Special Judge (ND & PS), Manipur. However, vide another order dated 16.12.2023 in Cril. Misc. Case No. 167 of 2023, Ld. Special Judge, (ND & PS), Manipur permitted the petitioner herein to appear before the

Ld. Chief Judicial Magistrate, Churachandpur on 19.12.2023 through video conferencing in order to furnish necessary documents for the bail bond and the same also was done. During this time, the charge sheet in the case was filed and submitted on 24.11.2023 and thereafter, vide order dated 08.01.2024, the Ld. Special Judge (ND & PS), Manipur fixed the matter for acceptance of bail bond submitted by the petitioner. Vide impugned order dated 05.02.2024, in Special Trial Case No. 57 of 2023, the Ld. Special Judge (ND & PS), Manipur held that since the charge sheet has been submitted before the accused furnishes the necessary bond, the prayer for allowing him to furnish the necessary bond via virtual mode was rejected. The operative portion of the order is reproduced herein below:

"Since the final complaint has been submitted before the accused furnishes the necessary bonds, the prayer to allow him to furnish the necessary bonds via virtual mode is rejected in view of the decision of the Hon'ble Supreme Court in Uday Mohanlal Acharya Vs State of Maharashtra."

[3] Mr. Serto T. Kom, learned counsel for the petitioner submitted that the Ld. Special Judge (ND & PS), Manipur has wrongly interpreted the decision in the case of ***Uday Mohanlal Acharaya Vs. State of Maharashtra*** reported in ***(2001) 5 SCC 453*** and refers to Para No. 13. On failure to submission of necessary bond, the continue custody of the accused even after allowing default bail will be valid and if charge sheet is filed during the pendency of the application for default bail, the accused is still entitled to default bail. The aforementioned Para is reproduced herein below:

13.

In the aforesaid premises, we are of the considered opinion that an accused must be held to have availed of his right flowing from the legislative mandate engrafted in the proviso to sub-section(2) of Section 167 of the code if he has filed an application after the expiry of stipulation period alleging that no challan has been filed and he is prepared to offer the bail that is ordered, and it is found as a fact that no challan has been filed within the period prescribed from the date of arrest of the accused. In our view, such a case, provision in question was brought on to the statute-book. In such a case, therefore, even if the application for consideration of an order of being released on bail is posted before the court after some length of time, or even the higher forum for getting a formal order of being released on bail in enforcement of his indefeasible right, then filing of challan at that stage will not take away the right of the accused.

2. *Under the proviso to the aforesaid sub-section (2) of Section 167, the Magistrate may authorize detention of the accused otherwise than in the custody of police for a total period not exceeding 90 days where the investigation relates to offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and 60 days where the investigation relates to any other offence.*

3. *On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate.*

4. *When an application for bail is filed by an accused for enforcement of his indefeasible right alleged to have*

been accused in his favour on account of default on the part of the investigating agency in completion of the investigation within the specified period, the Magistrate/court must dispose of it forthwith, on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified and no charge sheet has been filed by the investigating agency. Such prompt action on the part of the Magistrate/court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the investigating agency in completing the investigation within the period stipulated."

[4] Mr. Serto T. Kom, learned counsel for the petitioner also refers to the judgment of ***M. Ravindran Vs. Directorate of Revenue Intelligence*** reported in ***(2021) 2 SCC 485*** to the extent that the continued custody of the accused after passing order of default bail will be valid if the accused is unable to furnish bond. The relevant Paras of the said judgment are reproduced herein below:

"25.1. Once the accused files an application for bail under the proviso to investigation. Thus, if the accused applies for bail under Section 167(2) CrPC read with Section 36-A(4), NDPS Act upon expiry of 180 days or the extended released on default bail, accruing after expiry of the stipulated time-limit for period, as the case may be, the court must release him on bail forthwith without any unnecessary delay after getting necessary information from the Public Prosecutor, as mentioned supra. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigating agency.

25.2. The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency seeking extension of time by the prosecution before the court; or filing of the of the bail application; or subsequent filing of the charge-sheet or a report charge-sheet during the interregnum when challenge to the rejection of the bail c application is pending before a higher court.

25.3. However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a charge-sheet, additional complaint or a report seeking extension of time is preferred before the Magistrate, the right to default bail would be extinguished. The Magistrate would be at liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the CrPC.

25.4. Notwithstanding the order of default bail passed by the court, by virtue of Explanation I to Section 167(2), the actual release of the accused from custody is contingent on the directions passed by the competent court granting bail. If the accused fails to furnish bail and/or comply with the terms and conditions of the bail order within the time stipulated by the court, his continued detention in custody is valid.”

[5] The learned counsel for the petitioner has further submitted that the accused whose default bail was allowed, will be actually released only after furnishing of the necessary bond as directed by the Ld. Trial Court. All these judgments held that the continued custody of the accused till the submission of bonds will be valid and these judgments are not a proposition of law that, if the charge sheet is submitted before submission of the bail bond, the default bail is automatically vacated.

[6] On the other hand, Mr. N. Brojendro, learned Special PP for DRI draws the attention of this Court to Para No. 31 of the dissenting judgment passed in ***Uday Mohanlal Acharaya Vs. State of Maharashtra (Supra)*** while it is recorded that the default bail will be complete on submission of the necessary sufficient bond and unless the bond is submitted, it cannot be stated that the accused has availed the provision of statutory bail under Section 167 (2) of CrPC under Para 31 of the judgment of ***Uday Mohanlal Acharaya Vs. State of Maharashtra (supra)***. The aforementioned Para No. 31 reads as follows:

"31. In case the Court concerned has adopted any dilatory tactics or an attitude to defeat the right of the accused to be released on bail on the ground of default, the accused should immediately move the superior court for appropriate direction. But if the delay is bona fide and unintentional and in the meantime challan is filed then in view of the aforesaid judgments of this Court, such a petition has to be dismissed and it cannot be said that the accused has already availed of the right accruing under the proviso to Section 167 of the Code. It need not be repeated that the right accruing under the proviso to Section 167(2) of the Code on the expiry of the statutory period of sixty days cannot be said to have been availed of by mere making of an application for bail expressing therein willingness to furnish bail, but on furnishing bail bond as required under clause (a)(ii) of the proviso read with Explanation I to Section 167(2) of the Code. If because of any bona fide view or procedure adopted by the court concerned some delay is caused and in the meantime the challan is filed, the court has no power to direct release under the proviso to Section 167(2) of the Code."

[7] Mr. N. Brojendro, learned Special PP submitted that since the petitioner is not able to submit the bail bond in terms of Para 31 as mentioned above, the petitioner is not entitled to default bail.

[8] It is an admitted fact that the petitioner was released on default bail vide order dated 25.10.2023. However, due to situation of Manipur violence, he was in difficulty to submit the bail bond at Imphal. Vide order dated 24.11.2023, it was directed that the bail bond be submitted to the Ld. CJM, Churachandpur. However, during that time, the charge sheet was submitted before the submission of the bail bond and accordingly, by the impugned order dated 05.02.2024, it was held that in terms of the judgment of ***Uday Mohanlal Acharaya Vs. State of Maharashtra***, the petitioner is not entitled to be released on bail.

[9] This Court has considered the materials available on record, submissions made at the Bar and the decisions cited above. It is a settled position of law that the bail under Section 167 of CrPC is granted on the ground that the investigating agency fails to submit the report or charge sheet within the stipulated period of time of 60 days or 90 days as mandated and on expiry of the stipulated period of time, the accused is entitled to be released on default bail, if he undertakes to submit the sufficient bond. While passing an order of default bail, the Court is not required to examine the case on merit, and it is only to examine whether the charge sheet has been submitted within the stipulated period of time or not. However, after expiry of the stipulated period of time and before

filing of the application for default bail if the prosecution submits the charge sheet, the right to avail default bail is no longer available.

[10] In the present case, the default has already been granted and due to the prevailing situation in the State of Manipur during the relevant period, the accused has difficulty in submission of the bail bond before the Special Judge (ND & PS), Manipur at Imphal and accordingly, a permission was granted to submit the same before the CJM, Churachandpur. But, during this time, the charge sheet has been submitted and on appreciation of the ratio of the dissenting opinion in ***Uday Mohanlal Acharaya***' case, the Ld. Special Judge (ND & PS) has wrongly rejected the request for submission of bail bond.

[11] This Court has gone through the judgment of ***Uday Mohanlal Acharaya*** and reliance of para No. 31 made by the learned Special PP as well as by the Ld. Special Court in the dissenting opinion of the judgment of 3 (three) Hon'ble Judges, where majority held in para No. 13 as extracted above that the right of default bail cannot be defeated even by the subsequent submission of charge sheet. The judgments cited above say that continued custody of accused till submission of bond is valid and these decisions are not authority to the point that default bail cancels automatically if charge sheet is submitted before furnishing sufficient bond by the accused.

[12] In the circumstances, the petition is allowed. The impugned order dated 25.05.2024 passed by the Ld. Special Judge (ND & PS),

Manipur in Special Trial Case No. 57 of 2023 is set aside and the petitioner/accused is permitted to furnish bond before the Ld. Chief Judicial Magistrate, Churachandpur. On furnishing sufficient bond as directed earlier to the Ld. CJM, Churachandpur, a copy of the same be forwarded to the Ld. Special Judge (ND & PS), Manipur to issue release order.

[13] Accordingly, the present petition stands disposed of.

[14] Send a copy of this order to the Ld. CJM, Churachandpur and Ld. Special Judge (ND & PS), Manipur at Lamphelpat.

JUDGE

Bipin