



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 53 of 2025

Date of Decision: 08.12.2025

Shri. Hafizur Rahman
 S/o Jamal Uddin
 Vill-Moiradia
 P.S. Kachumara
 Dist-Barpeta, Assam

..... **Petitioner**

- Vs-

1. The State of Meghalaya represented through
 The Secretary and Commissioner, Home Police
 Department, Government of Meghalaya.
2. The Superintendent of Police,
 Ri-Bhoi District, Meghalaya.

..... **Respondents**

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. A. Paramanik, Adv.
 Mr. M. Sarkar, Adv.

For the Respondent(s) : Mr. R. Gurung, GA.
 Mr. S.A. Sheikh, GA.

i) Whether approved for reporting in Yes/No



Law journals etc.:

ii) Whether approved for publication
in press:

Yes/No

JUDGMENT AND ORDER (ORAL)

1. Heard Mr. A. Paramanik, learned counsel for the petitioner, who has submitted that the brother of the petitioner, Shri. Sirajul Haque is an accused, who was arrested on 06.08.2025 in connection with Nongpoh P.S. Case No. 83 (08) 2025 under Section 21(b)/27A/29 NDPS Act.

2. The learned counsel also submits that this instant application is filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 with a prayer for grant of bail on behalf of the said accused, brother of the petitioner.

3. Mr. R. Gurung, learned GA appears on behalf of the State respondent.

4. In course of hearing, on a query made by this Court as far as the investigation of the case is concerned, the learned GA has fairly submitted that, on being instructed by the Investigating Officer, it is learnt that the charge sheet have not yet been filed in this case. The learned GA has also candidly submitted that, admittedly, the petitioner is entitled to default bail.



5. At this juncture, the learned counsel for the petitioner has submitted that, though, the petitioner has not made any specific prayer for grant of default bail in this instant application, however, in the light of the admission by the Investigating Officer, it is prayed that the accused, brother of the petitioner may be allowed to go on default bail.

6. This Court has considered the submission made by the respective parties, and without going into the merits of the case, that is, as to the gravity and severity of the offence alleged and the likely punishment that the accused may have to undergo, if convicted, the fact remains that, since there is the mandatory period of 60 days in cases of this kind where the investigation has to be completed, the same not having been completed, therefore, the accused person is entitled to be let off on default bail.

7. In this connection, it will not be out of place to refer to certain authorities on the subject of default bail. The case of **Rakesh Kumar Paul v. State of Assam reported in (2017) 15 SCC 67** being one of such cases, wherein at para 17, 37, 43, 44, 47 and 82, the following is observed:

“17. The significance of the period of 60 days or 90 days, as the case may be, is that if the investigation is not completed within that period then the accused (assuming he or she is in custody) is entitled to “default bail” if no charge-sheet or challan is filed on the 60th or 90th day, the accused applies for “default bail” and is prepared to and does furnish bail for release. As can be seen from



the narration of facts, no charge-sheet or challan was filed against the petitioner on the 60th day but was filed before the conclusion of 90 days. Consequently, was the petitioner entitled to “default bail” after 60 days? According to the petitioner the answer is in the affirmative since he had not committed an offence punishable with imprisonment for not less than ten years, but according to the State he had committed an offence punishable with imprisonment for ten years.

37. This Court had occasion to review the entire case law on the subject in *Union of India v. Nirala Yadav*, (2014) 9 SCC 457. In that decision, reference was made to *Uday Mohanlal Acharya v. State of Maharashtra*, (2001) 5 SCC 453 and the conclusions arrived at in that decision. We are concerned with Conclusion (3) which reads as follows: (*Nirala Yadav case*, (2014) 9 SCC 457, SCC p. 472, para 24)

““13. (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.’ (*Uday Mohanlal case*, (2001) 5 SCC 453, SCC p. 473, para 13)”

43. This Court and other constitutional courts have also taken the view that in the matters concerning personal liberty and penal statutes, it is the obligation of the court to inform the accused that he or she is entitled to free legal assistance as a matter of right. In *Khatri (2) v. State of Bihar*, (1981) 1 SCC 627 the Judicial Magistrate did not provide legal representation to the accused since they did not ask for it. It was held by this Court that this was unacceptable and that the Magistrate or the Sessions Judge before whom an accused appears must be held under an obligation to inform the accused of his or her entitlement to obtain free legal assistance at the cost of the State. In *Suk Das v. UT of Arunachal Pradesh*, (1986) 2 SCC 401 the accused was tried and convicted without legal representation, due to his poverty. He had not applied



for legal representation but notwithstanding this, this Court held that the trial was vitiated and the sentence awarded was set aside, particularly since the accused was not informed of his entitlement to free legal assistance, nor was an inquiry made from him whether he wanted a lawyer to be provided at State expense. *In Rajoo v. State of M.P.*, (2012) 8 SCC 553 the High Court dismissed, *Rajoo v. State of M.P.*, Criminal Appeal No. 3 of 1991, decided on 5-9-2006 (MP) the appeal of the accused without enquiring whether he required legal assistance at the expense of the State even though he was unrepresented. Relying on *Khatrī*, (1981) 1 SCC 627 and *Suk Das*, (1986) 2 SCC 401 this Court remanded his appeal to the High Court for rehearing after giving an opportunity to the accused to take legal assistance. Finally, in *Mohd. Ajmal Amir Kasab v. State of Maharashtra*, (2012) 9 SCC this Court relied on *Khatrī* (2) v. *State of Bihar*, (1981) 1 SCC 627 and held in paragraph 474 of the Report as follows: (*Mohd. Ajmal case*, (2012) 9 SCC 1, SCC p. 186)

“474. ... it is the duty and obligation of the Magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, that one would be provided to him from legal aid at the expense of the State. The right flows from Articles 21 and 22(1) of the Constitution and needs to be strictly enforced. We, accordingly, direct all the Magistrates in the country to faithfully discharge the aforesaid duty and obligation and further make it clear that any failure to fully discharge the duty would amount to dereliction in duty and would make the Magistrate concerned liable to departmental proceedings.”

44. Strong words indeed. That being so we are of the clear opinion that adapting this principle, it would equally be the duty and responsibility of a court on coming to know that the accused person before it is entitled to “default bail”, to at least apprise him or her of the indefeasible right. A contrary view would diminish the respect for personal liberty, on which so much emphasis has



been laid by this Court as is evidenced by the decisions mentioned above, and also adverted to in *Nirala Yadav, Union of India v. Nirala Yadav*, (2014) 9 SCC 457.

47. Consequently, we are of opinion that the petitioner had satisfied all the requirements of obtaining “default bail” which is that on 11-1-2017 he had put in more than 60 days in custody pending investigations into an alleged offence not punishable with imprisonment for a minimum period of 10 years, no charge sheet had been filed against him and he was prepared to furnish bail for his release, as such, he ought to have been released by the High Court on reasonable terms and conditions of bail.

82. The right to get “default bail” is a very important right. Ours is a country where millions of our countrymen are totally illiterate and not aware of their rights. A Constitution Bench of this Court in *Sanjay Dutt*, (1994) 5 SCC 410 has held that the accused must apply for grant of “default bail”. As far as Section 167 of the Code is concerned, Explanation I to Section 167 provides that notwithstanding the expiry of the period specified (i.e. 60 days or 90 days, as the case may be), the accused can be detained in custody so long as he does not furnish bail. Explanation I to Section 167 of the Code reads as follows:

“*Explanation I.* – For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in para (a), the accused shall be detained in custody so long as he does not furnish bail.”

This would, in my opinion, mean that even though the period had expired, the accused would be deemed to be in legal custody till he does not furnish bail. The requirement is of furnishing of bail. The accused does not have to make out any grounds for grant of bail. He does not have to file a detailed application. All he has to aver in the application is that since 60/90 days have expired and charge-sheet has not been filed, he is entitled to bail and is willing to furnish bail. This indefeasible right cannot be defeated by filing the charge-sheet after the accused has offered to furnish bail.”

8. In view of the above, the accused, brother of the petitioner, Shri.



Sirajul Haque is hereby directed to be released on default bail on the following conditions:

- i) That he shall not abscond or tamper with the evidence or witnesses;
- ii) That he shall attend court as and when called for;
- iii) That he shall not leave the jurisdiction of India, except with due permission of the court concerned; and
- iv) That he shall bind himself on a personal bond of ₹ 50,000/- (Rupees fifty thousand) with one surety of like amount to the satisfaction of the Trial Court.

9. In view of the above noted observations, this petition is accordingly disposed of. No costs.

Judge