HIGH COURT OF TRIPURA
AGARTALA

B.A. No. 129 of 2020

Maya Akther,
wife of Babul Miah
Resident of Rajnagar, Muslim Para,
P.S.-P.R. Bari, Belonia
South Tripura

----Petitioner(s)

For and on behalf of

Babul Miah
Son of Lt. Chutto Miah,
Resident of Rajnagar, Muslim Para,
P.S.-P.R. Bari, Belonia
South Tripura

----Accused(s)

Versus

The State of Tripura

---- Respondent(s)

For Appellant(s)	:	Mr. S. Lodh, Adv. Mr. D. Datta, Adv.
For Respondent(s)	:	Mr. R. Datta, P.P.
Date of hearing & delivery of judgment and order	:	18.12.2020
Whether fit for reporting	:	NO

HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

Judgment & Order (Oral)

[1] This is an application under section 439 of the Code of Criminal Procedure, 1973 (Cr.P.C in short) for grant of bail to accused Babul Miah who has been arrested and put to custody in PR Bari P.S.

case No. 41 of 2020 under Sections 21(c) & 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (NDPS Act in short).

[2] Smt. Maya Akther, wife of the accused has filed this application seeking release of her husband on bail. Her application is supported by an affidavit sworn by her before the Notary at Agartala on 07.12.2020. After the bail application was placed before this court on 10.12.2020, the case diary was called for which has been produced today. The accused is in custody since his arrest on 05.05.2020 and he has completed 227 days in custody.

[3] Heard Mr. S. Lodh, learned counsel appearing along with Mr. D. Datta, learned counsel for the petitioner. Also heard Mr. R. Datta, learned P.P appearing for the State respondent.

[4] Brief facts of the case are as under.

[5] Acting on the information received from a secret source, Sri Sathai Mog, ASI of police of PR Bari police station along with his accompanying police staff sat in ambush near a rubber garden at Chalitatali within the jurisdiction of PR Bari police station and found 2 (two) persons carrying a plastic sack bag of white colour. The police team started chasing those persons. One of them managed to flee away and the present accused was detained by police from whose possession the following contraband was recovered and seized:

150 bottles of Eskuf (Codeine phosphate and chlorpheniramine maleate syrup).

[6] He was then brought to the police station and suo motu FIR was lodged by said ASI Sathai Mog and based on his FIR, PR Bari PS case No. 2020/PRB/041 under sections 21(c) & 29, NDPS Act was registered and the investigation of the case was taken up.

[7] During investigation of the case, several bail applications were moved on behalf of the accused before the learned Special Court all of which were rejected by the learned Special Judge. Hence, this bail application under section 439 Cr.P.C.

[8] It is argued by Mr. S. Lodh, learned counsel for the petitioner that apart from the ground of inadequacy of evidence against him, the accused is entitled to default bail in terms of sub section (4) of section 36A of the NDPS Act because he is in custody beyond the statutory period of 180 days and no charge sheet has been filed against him till date and even no application has been filed by the investigating agency within 180 days seeking extension of time beyond the statutory period for completion of investigation. Learned counsel, therefore, urges the court for immediate release of the accused on bail. In support of his contention, learned counsel has relied on the decision dated 28.02.2020 of this High Court in B.A No. 20 of 2020 whereby the High Court released the petitioner on bail on the ground of default of the investigating agency in completing the investigation and filing charge sheet within the statutory period of 180 days. According to learned counsel of the petitioner the ratio decided by this court in the said case

is equally applicable to the case in hand and the accused is entitled to be released on bail.

[9] Mr. R. Datta, learned P.P has been fair to submit that there is no doubt about the fact that the accused is entitled to default bail simply for the reason that period of detention of the accused in custody has exceeded 180 days and no prayer was ever made within the period of 180 days before the Special Court for extension of the period of detention of the accused beyond 180 days for the purpose of investigation in terms of the proviso to sub section (4) of section 36A of the NDPS Act, 1985. Mr. R. Datta, learned P.P urges the court to issue direction to the accused to cooperate with the investigation while releasing him on bail.

[10] This court in B.A No. 20 of 2020 decided on 18.02.2020 relied on the decisions of the Apex Court in **Hitendra Vishnu Thakur & Ors. Vs. State of Maharastra & Ors.** reported in **(1994) 4 SCC 602** and **Sanjay Kumar Kedia @ Sanjay Kedia Vs. Intelligence Officer, Narcotics Control Bureau & Anr.** reported in **(2009) 17 SCC 631**. In **Hitendra Vishnu Thakur & Ors. (Supra)** it was held by the Apex Court that if police fails to complete the investigation within statutory period and put up a challan against the accused in accordance with law under section 173, Cr.P.C, an indefeasible right to be enlarged on bail accrues in favour of the accused. In **Sanjay Kumar Kedia @ Sanjay Kedia (Supra)** while considering the legality of the Special Court's order extending time for completing investigation beyond the statutory period, the Apex

Court found that all the conditions laid down under the proviso to sub section (4) of section 36A of the NDPS Act were not taken care of by the Special Court and in the eventuality bail was granted to the accused setting aside the order of the learned Special Judge. The ratio decided in **Sanjay Kumar Kedia @ Sanjay Kedia (Supra)** does not apply to this case as the facts are completely distinguishable.

[11] In this case, the accused has been detained in custody beyond the statutory period of 180 days without any order of the learned Special Judge extending the period of his detention beyond 180 days in terms of the proviso to sub section (4) of section 36A of the NDPS Act.

[12] As it has been held by the Apex Court in **Hitendra Vishnu Thakur & Ors. (Supra)** the accused acquires an indefeasible right to bail in such circumstances.

[13] The applicability of the proviso to sub section (2) of section 167 Cr.P.C to the offences punishable under NDPS Act, 1985 has been clearly provided under sub section (4) of section 36A of the NDPS Act and it has been provided under the proviso to the said sub section (4) of section 36A of the NDPS Act that the statutory period of detention provided under the proviso to sub section (2) of section 167 Cr.P.C may be extended by the Special Court only on the report of the Public Prosecutor indicating the progress of the investigation and

showing specific reasons for the detention of the accused beyond the said period of 180 days.

[14] Apparently in this case the detention of the accused has exceeded the statutory period of 180 days and there is no order of the Special Court extending the said period of detention of the accused in terms of the proviso to sub section (4) of section 36A of the NDPS Act.

[15] In view of the above, this court is of the view that the accused is entitled to be released on bail immediately. Therefore, it is directed that the accused Babul Miah be released on bail on his furnishing bail bond of Rs.20,000/- (Rupees twenty thousand) with one surety of like amount to the satisfaction of the learned trial court on condition that he will make himself available to the Investigating Officer as and when called for.

[16] The bail petition is accordingly disposed of.

Return the case diary to learned P.P.

JUDGE

HIGH COURT OF TRIPURA
सत्यमेव जयते

Rudradeep