

# Page No.# 1/6 vs Central Bureau Of Investigation on 20 December, 2024

**Author: Manash Ranjan Pathak**

**Bench: Manash Ranjan Pathak**

Page No.#

GAHC010253342024

2024:GAU-AS:13031

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

Case No. : Bail Appln./3628/2024

GAJEN LIMBU  
S/O LATE DEB PRASAD LIMBU, RESIDENT OF VILLAGE NO. 1 NAHARANI  
GRANT, PS RANGAPARA DIST SONITPUR, ASSAM

2: SANTI LIMBU @ SHANTI LIMBU  
W/O BIR BAHADUR LIMBU

RESIDENT OF VILLAGE AND PS RANGAPARA DIST SONITPUR  
ASSA

VERSUS

CENTRAL BUREAU OF INVESTIGATION  
REP BY SC CBI

Advocate for the Petitioner : MR SARFRAZ NAWAZ, MD A RAHMAN, MR A W AMAN, MS  
SURAYA RAHMAN, MR. SURAJIT DAS, SAMIM RAHMAN

Advocate for the Respondent : SC, CBI,

BEFORE  
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

20-12-2024 Heard Mr. S Nawaz, learned counsel for the petitioners and Mr. M Haloi, learned Special Public Prosecutor, CBI for the respondent.

2. The petitioners, namely, (i) Gajen Limbu, son of late Deba Prasad Limbu, resident of Page No.# 2/6 Village- No. 1, Naharani Grant, Police Station-Rangapara, District-Sonitpur and (ii) Smt. Santi Limbu @ Smti. Shanti Limbu, wife of Bir Bahadur Limbu, resident of village-Rangapara, Police Station-Rangapara, District-Sonitpur have filed this application under Section 483 BNSS, 2023, praying for their release on bail in CBI Crime No. RC0172024E0032 arising out of Rangapara Police Station Case No. 66/2024 registered under Sections 316(2)/318(4) of the BNS, 2023 read with Sections 21(1)/21(2)/21(3) of the Banning of Unregulated Deposit Schemes Act, 2019 with added Section 409 IPC corresponding Section 316(5) BNS, 2023, corresponding to G.R. No. 1058/2024 and Tezpur Police Station Case No. 527/2024 registered under Sections 316(2)/318(4)/3(5) of the BNS, 2023 read with Sections 21(1)/21(2)/21(3) of the Banning of Unregulated Deposit Schemes Act, 2019, corresponding to G.R. No. 1333/2024 and in both Rangapara as well as Tezpur P.S. Cases, the petitioners were arrested on 04.09.2024 and are in custody since then.

3. Both the petitioners are charge-sheeted accused in CBI ACB GWH Case No. RC0172024E0032 which have been registered as one case of the CBI after investigation of Rangapara P.S. Case No. 66/2024 and Tezpur P.S. Case No. 527/2024 was handed over to the CBI. CBI submitted charge-sheet in the said CBI case on 30.11.2024 and charges are yet to be framed.

4. It is submitted that the petitioners were produced before the learned Chief Judicial Magistrate, Sonitpur, Tezpur in both Rangapara P.S. Case No. 66/2024 as well as Tezpur P.S. Case No. 527/2024 on 04.09.2024 for the first time after they were taken into custody in those two cases. As such, they have completed sixty days of statutory period of detention on 03.11.2024.

5. On 04.11.2024, CBI filed Petition No. 488/2024 before the learned Special Judge, CBI for addition of Section 409 IPC corresponding Section 316(5) of BNS, 2023 in said Rangapara P.S. Case No. 66/2024 as some transactions were made and executed before BNS, 2023 came into force and Section 409 IPC corresponding Section 316(5) of BNS, 2023 was accordingly allowed to be added.

6. Petitioners submitted that Section 409 IPC corresponding Section 316(5) of BNS, 2023 was added in said CBI ACB GWH Case No. RC0172024E0032 on 04.11.2024 in their absence Page No.# 3/6 and by that time the petitioners have already completed 60 days of their custody, prior to the adding of those Sections. Moreover, petitioners were not given any chance to claim their default bail. As such, the petitioners are entitled for their default bail.

7. In support of the claims of the petitioners, Mr. Nawaz, learned counsel placed reliance on a decision of the Hon'ble Supreme Court in the case of Rakesh Kumar Paul -Vs- State of Assam reported in 2017 (15) SCC 67.

8. Mr. Haloi, learned Special Public Prosecutor, CBI submitted that law is well settled that accused are not required to be heard while adding of any relevant Section in the case. Mr. Haloi also stated only on the prayer of the Investigating Authority, the Court having jurisdiction can incorporate a

certain penal Section in the case on the basis of materials placed before the Court.

9. Mr. Haloi, learned Special Public Prosecutor, CBI, has submitted that since the learned Special Court, CBI on application of the CBI dated 04.11.2024, being satisfied, directed to add Section 409 IPC corresponding Section 316(5) of BNS, 2023 and on adding those Sections under the IPC and BNS, respectively, noted above, the statutory detention period of the petitioners was extended up to 90 (ninety) days from 04.09.2024 and the CBI has already filed the Charge-Sheet in said CBI ACB GWH Case No. RCo172024E0032 on 30.11.2024, much within 90 (ninety) days from said 04.09.2024 against the accused persons of the case, including the petitioners herein, under Sections 120(B)/409/420 IPC corresponding Sections 61(2)/316(5)/318(4) of BNS, 2023 read with Sections 21(1)/21(2)/21(3)/23 of the Banning of Unregulated Deposit Schemes Act, 2019. Mr. Haloi, therefore, submits that the petitioners are not entitled for their default bail in the said CBI case. In support of his contention, Mr. Haloi placed reliance on the judgment of the Hon'ble Gujrat High Court in the case of Vijay Bhai Mala Bhai Bharwad and Others -Vs- State of Gujarat and Another decided on 01.08.2007 reported in 2007 0 Supreme (GUJ) 466 .

10. Mr. Haloi, learned Special PP, CBI submitted that petitioners did not file any application for their default bail on 03.11.2024 or immediately thereafter, whereas on 04.11.2024 Section 409 IPC corresponding Section 316(5) of BNS, 2023 was added in the case in pursuance of the order of the Court. As such Mr. Haloi submitted that the petitioners are not entitled for Page No.# 4/6 their default bail.

11. Law is well settled that if the Final Report under Section 173(2) CrPC is not filed within sixty or ninety days, as the case may be, the accused in custody is entitled to be released on bail on completion of their detention in custody of sixty/ninety days, as the case may be, that is commonly known as default bail, subject to the condition that the accused should be ready to furnish the bail.

12. The Hon'ble Supreme Court in the case of Chaganti Satyanarayana and Others -Vs- State of Andhra Pradesh reported in (1986) 3 SCC 141 have held that the period of detention for ninety days/sixty days as contemplated under the provisions of (i) and (ii) of Section 2 of Sub-Section 167 of the CrPC begins to run only from the date of remand.

13. The Hon'ble Apex Court have settled the law that the right to get default bail is an indefeasible right and this right must be exercised by the accused by offering to furnish bail. If charge-sheet is not filed and right for default bail has ripened into status of indefeasibility it cannot be frustrated by prosecution on any pretext. Accused can avail his/her liberty by filing an application stating that statutory period for filing charge-sheet or Challan has expired and same has not been filed and therefore, indefeasible right has accrued in his or her favour and further accused is prepared to furnish bail bond. No subterfuge should be resorted to, to defeat indefeasible right of accused for default bail during interregnum when statutory period for filing charge-sheet or challan expires and submission of charge-sheet of challan in Court. [Rakesh Kumar Paul -Vs- State of Assam reported in 2017 (15) SCC 67].

14. The Hon'ble Supreme Court have also held that it is 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 the accused of his or her of the indefeasible right.

15. Considering the decision of the Hon'ble Supreme Court in the case of Rakesh Kumar Paul (supra) and Union of India -Vs- Nirala Yadav reported in (2014) 9 SCC 457 and other cases, this Court is of the opinion that it is the duty of the concerned Court or the Magistrate, as the case may be, to inform and/or apprise the accused of his/her indefeasible right that if the police fails to submit the police report/investigation report within sixty days or ninety days, as the case may be, from the date of his/her first remand, then he/she is entitled for the default Page No.# 5/6 bail. For such purpose, this Court is also of the opinion that it is the duty of the Court or the Magistrate, as the case may be, to keep in mind that while remanding the accused in custody and fixing the next date for production of the said accused, the said period of 60 (sixty) days or 90 (ninety) days from the date of first remand of the accused is not over and preferably such date of production of the accused should be fixed a day or two before completion of said period 60 (sixty) days or 90 (ninety) days so that on production of the accused, he or she can be apprised of his/her right to get default bail on furnishing of bail bond on completion of statutory period of detention if no such offence report/charge-sheet/challan is filed by police within the period prescribed by the law.

16. In the case in hand, the learned Special Judge, CBI prior to 03.11.2024 remanded the petitioners back to jail till a date after 04.11.2024. As such, they were not present before the Court of learned Special Judge, CBI on 04.11.2024 when the CBI filed the application for adding of Section 409 IPC /Section 316(5) of BNS, 2023, whereby the statutory period of detention of the petitioners was extended from 60 days to 90 days from their first remand on 04.09.2024.

17. With effect from 04.09.2024, the petitioners have already completed their statutory period of detention on 03.11.2024 and on the 61 st day of their detention since 04.09.2024, the CBI filed the application for adding of Section 409 IPC/Section 316(5) of BNS, 2023, which was accordingly allowed by the Court of learned Special Judge, CBI by order dated 04.09.2024.

18. For the reasons above, the petitioners are entitled for their default bail in said CBI ACB GWH Case No. RC0172024E0032.

19. Accordingly, the petitioners, namely, (i) Gajen Limbu and (ii) Smt. Santi Limbu @ Smti. Shanti Limbu , be released on default bail in said CBI ACB GWH Case No. RC0172024E0032, on furnishing bail bond of Rs. 1,00,000/- each, with two local sureties each, of the like amount, one of which shall be a Government employee, either State or Central Government, to the satisfaction of the learned Special Judge, CBI, Assam on conditions that the petitioners --

(i) shall appear before the concerned Investigating Officer of said CBI ACB GWH Page No.# 6/6 Case No. RC0172024E0032 as and when they are required for necessary investigation of the said case;

(ii) Shall surrender their passports, if any, before the learned Special Judge, CBI, Assam on or before 27.12.2024.

(iii) shall not leave the territorial jurisdiction of Tezpur Police Station without obtaining prior written permission from the concerned I.O. of the said CBI P.S. Case;

(iv) shall not hamper or tamper with the evidence of the case;

(v) shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court;

(vi) shall not involve themselves in any criminal activities and

20. Any violation of the aforesaid terms and conditions by either of the petitioners, namely,

(i) Gajen Limbu and (ii) Smt. Santi Limbu @ Smti. Shanti Limbu, the bail granted to them in said CBI ACB GWH Case No. RCo172024E0032 shall stand automatically vacated.

21. With the above observations and directions, this bail application accordingly stands disposed of.

22. Return the case diary.

JUDGE Comparing Assistant