

Lungsibui Thiumai vs The Union Of India on 20 June, 2023

Author: Manash Ranjan Pathak

Bench: Manash Ranjan Pathak

GAHC010071942023

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

Case No. : Bail Appln./1224/2023

LUNGSIBUI THIUMAI
S/O- TABAN CHONANG, R/O- MAKUILONGDI, P.O. AND P.S. SENAPATI,
DIST. SENAPATI, MANIPUR

VERSUS

THE UNION OF INDIA
REPRESENTED BY THE STANDING COUNSEL, DIRECTORATE OF
REVENUE INTELLIGENCE.

Advocate for the Petitioner : MR. Y S MANNAN

Advocate for the Respondent : SC, DRI

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

20/06/2023 Heard Mr. Y S Mannan, learned counsel for the petitioner and Mr. S C Keyal, learned Special Public Prosecutor for the Directorate of Revenue Intelligence.

2. The petitioner, namely, Shri Lungsibui Thiumai, has filed this application under Section 439 Cr.P.C. seeking bail in NDPS Case No. 215/2022 arising out of DRI Case No. 18/CL/NDPS/HEROIN Page No.# 2/9 & METH/DRI/ GZU/2021-22 dated 04.02.2022 registered under Sections

8(c)/21(c)/22(c)/ 23(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, wherein he is in custody since 04.02.2022.

3. Perused the records of NDPS Case No. 215/2022 arising out of DRI Case No. 18/CL/NDPS/HEROIN & METH/DRI/GZU/2021-22 dated 04.02.2022 under Sections 8(c)/21(c)/22(c)/23(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 that was called for by the Court on 10.05.2023 in the present proceeding.

4. The petitioner contended that he is entitled for bail in the said NDPS Case No. 215/2022 on the ground of default bail as the final report in the case was submitted by the DRI beyond 180 days on 23.09.2022 after the period of 180 days. Secondly, it is submitted on his behalf that the trial of the case has not yet commenced and thirdly, two of the co-accused of the case arrested along with him were released on bail, more particularly, on the ground of default bail by the Trial Court on 01.02.2023, whereas his bail application was rejected by the Trial Court on 23.11.2022.

5. Mr. Mannan, learned counsel in support of the petitioner relied on the judgments of the Hon'ble Apex Court in the cases of Rakesh Kumar Paul Vs. State of Assam reported in (2017) 15 SCC 67, M. Ravindran Vs. Intelligence Officer, Directorate of Revenue Intelligence reported in (2021) 2 SCC 485, Mohd. Muslim @ Hussain Vs. State (NCT of Delhi) Special Leave Petition (Crl.) No(s). 915 of 2023 decided by the Hon'ble Supreme Court on 28.03.2023 as well as the order dated 11.04.2023 passed by a co-ordinate Bench of this Court in BA No. 1790/2022 (Smti. Rita Boro @ Nelamati Boro Vs. State of Assam).

6. Mr. Keyal, learned Special Public Prosecutor for the DRI relied on the judgments of the Hon'ble Apex Court in the case of State of Maharashtra Vs. Surendra Pundlik Gadling, reported in (2019) 5 SCC 178 (paras 38 to 43) as well as The State Through Central Bureau of Investigation Vs. T. Gangi Reddy @ Yerra Gangi Reddy reported in (2023) 4 SCC 253.

7. Brief facts of the case is that on a specific information received by the DRI at its Guwahati Office on 03.02.2022, a Maruti Eeco Van vehicle bearing registration No. AS-01-EY-3766 was intercepted near Jorabat Flyover, Guwahati within Kamrup (Metro) district of Assam on 03.02.2022 in presence of two independent witnesses, with two persons in the said vehicle, one person was driving the said vehicle and the other person was sitting in the front passenger seat,. The driver of the vehicle introduced himself to be Lungsibui Thiumai of Senapati, Manipur, i.e., the petitioner herein and the other person sitting in the vehicle introduced himself as TH. Tasibou also from Senapati, Manipur.

Page No.# 3/9 During extensive charge and rummaging to detect any cavity or chamber, few soap boxes containing brownish powder substance in transparent polythene were found concealed in a hollow chamber at the lower end of the door frame of the said Eeco van and the petitioner during the investigation admitted that the soap boxes contained heroin and further confessed that there is also one packet of Methamphetamine tablets concealed in the same chamber. Being guided by the petitioner, the DRI officials recovered one black rectangular packet wrapped with transparent adhesive. In that way 17 nos. of soap cases containing similar brown colour substance and one black

rectangular packet wrapped with adhesive tapes were recovered from both the left and the right door frames of the said Maruti Eeco van. On being enquired by DRI officials, the petitioner stated that his wife namely, Smti. Chonghoi Haokip and her aunty were the owner of the recovered drugs and that they look after the trade of Narcotic drugs and submitted that his wife is present at their residents at Pilingkata Road, Basistha, Guwahati and they would have proceeded to that house if not had been apprehended. During such search, the mobile phones of the petitioner and the other accused, Indian currency of Rs. 4,44,200/- and three ATM cards were recovered and in that manner, 679.60 Gms. (277.50 Gms. with regard to 17 Sachets + 402.10 Gms. relating to 26 soap cases) of powdery substance and 10,000 nos. of Methamphetamine tablets, weighing about 1000 Gms., mostly orange in colour and few in green were recovered. The value of those 679 Gms. of heroin was at Rs.67,96,000/- and that of 10,000/- Methamphetamine tablets was of Rs.70,00,000/-. Altogether the Narcotics Drugs recovered from the said vehicle worth Rs.1,47,11,648/-.

8. Later, wife of the petitioner, Smti. Chonghoi Haokip along with the petitioner and TH. Tasibou were taken into custody on 04.02.2022 in said DRI Case No. 18/2021-2022 corresponding to NDPS Case No. 215/2022.

9. The petitioner along with his wife, Smti. Chonghoi Haokip preferred a bail application under Section 439 CrPC being Bail Appln. No. 871/2022 in said DRI Case No. 18/2021-2022 under Sections 8(c)/21(c)/ 22(c)/23(c)/29 of the NDPS Act, 1985 and on perusal of the detail report of the DRI authorities, a co-ordinate Bench of this Court by order dated 05.05.2022 rejected the said Bail Application of the petitioner.

10. On consideration of application No. 2099/2022 filed by the Investigating Officer of the case through the learned Special Counsel for DRI under Section 36A(4) of the NDPS Act, 1985 seeking extension of time limit for investigation of the said DRI Case No. 18/2021-2022 for further period of 180 days as the Investigating Authority was in need of such time to unveil the entire truth behind the Page No.# 4/9 crime and to look the other culprits working behind the scene and also to find out the proper address of the persons involved in the crime; the learned Special Judge, Kamrup (M), Guwahati by order dated 22.07.2022 passed in said DRI Case No. 18/2021-22 extended the time for investigation of the said case under Section 36A(4) of the NDPS Act, 1985 for another period of 2 (two) months beyond 180 days.

11. Wife of the petitioner, Smti. Chonghoi Haokip filed a criminal petition under Section 482 CrPC being Crl. Pet. No. 804/2022 before this Court on 10.08.2022 challenging the said order dated 22.07.2022 passed by the learned Special Judge, Kamrup (Metro), Guwahati in DRI Case No. 18/2021- 22, noted above.

12. In the meanwhile, the wife of the petitioner accused, Smti. Chonghoi Haokip gave birth to a male child on 16.09.2022 while in jail custody.

13. A co-ordinate Bench of this Court by order dated 07.11.2022 allowed the said Crl. Pet. No. 804/2022 preferred by said Smti. Chonghoi Haokip and set aside the order dated 22.07.2022

passed by the learned Special Judge, Kamrup (M), Guwahati, whereby the learned Special Judge, in exercise of the power under Section 36A(4) of the NDPS Act, 1985, extended the period of investigation of the said DRI Case No. 18/2021-22 by another period of 2 (two) months beyond 180 days. The said Court have also considered that in the meanwhile the DRI authorities on 22.09.2022 submitted the Charge- Sheet/ Offence Report in the said DRI Case No. 18/2021-22 and consequently the said DRI Case has been registered as NDPS Case No. 215/2022. The Court while setting aside the said order dated 22.07.2022 of the learned Special Judge, noted above, observed that there was nothing on record that on completion of the said period of 180 days the petitioner of said Crl. Pet. No. 804/2022 had moved the Court for default bail and accordingly, granted liberty to the said petitioner to approach the Court of the learned Special Judge, Kamrup (Metro), Assam for bail observing further that if such an application is made, the learned Court would have the liberty to consider the prayer for bail in accordance with law by taking note of the fact as to whether or not final report had been filed by the prosecution on 22.09.2022 and by taking into other parameters as required for considering the prayer for bail.

14. Petitioner stated that on behalf of the wife of the petitioner, Smti. Chonghoi Haokip, on 22.11.2022, a petition being No. 2560/2022 under Section 437 CrPC was filed before the learned Additional Sessions Judge FTC No. 3, Kamrup (Metro), Guwahati in the NDPS P.S. Case No. 215/2022 (arising out of said DRI Case No. 18/2021-22) and the learned Additional Sessions Judge FTC No. 3, Page No.# 5/9 Kamrup (Metro), Guwahati after hearing both the parties, by order dated 23.11.2022 rejected the bail application of said Smti. Chonghoi Haokip.

15. Against the said rejection of her bail on 23.11.2022 said Smti. Chonghoi Haokip preferred Crl. Pet. No 1257/2022 and a co-ordinate Bench of this Court by an order dated 25.01.2023 allowed the said criminal petition, i.e., Crl. Pet. No 1257/2022 and set aside the order dated 23.11.2022 of the learned Additional Sessions Judge FTC No. 3, Kamrup (Metro), Guwahati rejecting the bail prayer of the wife of the petitioner and relegated the matter to the Court concerned directing her to file a fresh petition under Section 167(2) CrPC along with a certified copy of the said order dated 25.01.2023, with the observation that the Court concerned shall consider the said bail application of the wife of the petitioner in accordance with law, in the light of observation made in the said order dated 25.01.2023 and also in the case of M. Ravindran (supra) specially para 25.2 of the said case. In terms of the said order, wife of the petitioner, Smti. Chonghoi Haokip filed Pet. No. 223/2023 for her bail on 01.02.2023 and the learned Additional Sessions Judge FTC No. 3, Kamrup (Metro), Guwahati by order dated 01.02.2023 granted bail to the petitioner in said NDPS Case No. 215/2022.

16. On 22.02.2023 Petition No. 441/2023 was filed on behalf of the petitioner for his bail in said NDPS Case No. 215/2022 before the learned Additional Sessions Judge FTC No. 3, Kamrup (Metro), Guwahati stating that he was in custody since 04.02.2022, period of 180 days was over on 03.08.2022, offence report/charge-sheet in the case was filed on 23.09.2022 and that he is entitled to get the benefit of bail on the ground parity as the remaining accused persons have already been granted bail by the said Court.

17. After hearing the parties and considering the matter, the learned Additional Sessions Judge FTC No. 3, Kamrup (Metro), Guwahati found that with regard to the two of the accused persons of said

NDPS Case No. 215/2022, who were granted bail, their bail application were pending when the statutory period was completed and the Offence Report/Charge-Sheet in the said case was not yet filed; but for the petitioner herein no such bail application in the said case was found to be pending at the relevant time and that under such circumstances the said Court did not find force in the prayer made by the petitioner to grant him bail on the ground of parity in the said NDPS Case No. 215/2022 and accordingly, learned Additional Sessions Judge FTC No. 3, Kamrup (Metro), Guwahati rejected the bail prayer of the petitioner and fixed the matter on 11.04.2023.

18. It is seen from the records that on 03.02.2023, learned Additional Sessions Judge FTC No. 3, Kamrup (Metro), Guwahati framed charge against the three accused persons in said NDPS Case No. Page No.# 6/9 215/2022 including the petitioner under Sections 8(c)/22(c)/23(c)/29 of the NDPS Act, 1985 that were read over and explained to the accused persons of the case to which the accused persons pleaded not guilty and claimed to be tried.

19. It is also seen from the records of the case that 03.06.2023 was the last date of said NDPS Case No. 215/2022 for physical production and evidence.

20. Perused and considered the judgments cited by both the parties.

21. From the records of the case, it is seen that the Bail Application of the petitioner filed along with his wife Smti. Chonghoi Haokip being Bail Application No. 871/2022 that was filed on 18.04.2022, before 180 days in custody in said DRI Case No. 18/2021-22 was rejected by a co-ordinate Bench of this Court on 05.05.2022. Thereafter, the present petitioner did not file any application for his bail in the said DRI Case except the Petition No. 441/2023 before the learned Additional Sessions Judge FTC No. 3, Kamrup (Metro), Guwahati that was rejected on 17.03.2023.

22. Mr. Keyal, learned Special Public Prosecutor for the DRI submitted that the learned Special Judge, Kamrup (Metro), Guwahati in said DRI Case No. 18/2021-2022 by order dated 22.07.2022 extended 2 (two) months time beyond 180 days under Section 36A(4) of the NDPS Act, 1985 that was set aside and quashed by the High Court only on 07.11.2022 in said Crl. Pet. No. 804/2022 and therefore, the Offence Report/Charge-sheet that was filed in the case on 23.09.2022, was very much within 2 (two) months time from completion of 180 days from 04.02.2022 and before the said order dated 07.11.2022, i.e., the day on which the said extension granted on 22.07.2022 was set aside and quashed.

23. In the case of Rakesh Kr. Paul (supra) their Lordships of the Hon'ble Supreme Court, at Para 44 observed that - 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 of personal liberty, on which so much emphasis has been laid by the Court as is evidence by the decisions mentioned above (noted in the said case of Rakesh Kr. Paul), and also adverted to in Niralda Yadav [Union of India Vs. Niralda Yadav (2014) 9 SCC 457].

24. In the case of M. Ravindran (supra) the Hon'ble Supreme Court at Para 18.10 observed that - agreeing with the view expressed in the case of Rakesh Kr. Paul (supra) that as a cautionary measure the counsel for the accused as well as the Magistrate ought to inform the accused of the availability of Page No.# 7/9 the indefeasible right under Section 167(2) [CrPC] once its accrues to him, without any delay. This is especially where the accused is from underprivileged section of society and is unlikely to have access to information about his legal rights. Such knowledge sharing by Magistrates will thwart any dilatory tactics by the prosecution and also ensure that the obligations spelled out under Article 21 of the Constitution and the Statement of Objects and Reasons of the CrPC are upheld.

25. We have seen from the records of the case that all the three accused persons of the said DRI Case No. 18/2021-2022 were produced before the learned Sessions Judge, Kamrup (Metro), Guwahati on 05.08.2022 and thereafter on 18.08.2022, 31.08.2022, 12.09.2022, 26.09.2022, 10.10.2022, 21.10.2022, and 28.10.2022, prior to the order dated 07.11.2022 passed in Crl. Pet. No. 804/2022 setting aside the order dated 22.07.2022 extending the period of two months beyond 180 days.

26. From the order sheets of Crl. Pet. No. 804/2022, it is seen (as available in the KIOSK/Net) that there was no interim order passed by the Court in said Crl. Pet. No. 804/2022 staying the order dated 22.07.2022 of the learned Special Judge, Kamrup (Metro), Guwahati, noted above.

27. As the said order dated 22.07.2022 of the learned Special Judge extending two months period beyond 180 days passed in said DRI Case No. 18/2021-22 under Section 36A(4) of the NDPS Act, 1985 was set aside and quashed by the High Court vide order dated 07.11.2022 passed in said Crl. Pet. No. 804/2022, therefore the said DRI Case No. 18/2021-22 revived back to the earlier position i.e., without any extension of time under Section 36A(4) of the NDPS Act, 1985 devoid of any Offence Report/Charge Sheet in the said DRI case beyond 180 days from 04.02.2022.

28. After the said order of the Court dated 07.11.2022 passed in Crl. Pet. No. 804/2022, the petitioner was produced before the learned Additional Sessions Judge FTC No. 3, Kamrup (Metro), Guwahati on 11.11.2022, 25.11.2022, 09.12.2022, 23.12.2022, 06.01.2023, 20.01.2023, 03.02.2023, 17.02.2023, 03.03.2023, 17.03.2023. Further, on 03.02.2023 charge in said NDPS Case No. 215/2022 was framed against the petitioner and the other two accused persons of the case and on 17.03.2023, bail prayer of the petitioner was rejected by the learned Trial Court.

29. The period of 180 days in custody of the petitioner was actually over on 03.08.2022 and the Offence Report/Charge-Sheet in the case was filed on 23.09.2022. But the concerned Court on the dates mentioned above in the said DRI Case No. 18/2021-22 / NDPS Case No. 215/2022 did not inform the accused petitioner of the availability of his indefeasible right of default bail under Section 167(2) CrPC, as laid down in the case of Rakesh Kr. Paul (supra) and M. Ravindran (supra) enabling Page No.# 8/9 him to file appropriate bail application for his default bail in the said DRI Case and he continued remain in jail hojot.

30. But the other two accused persons of the case on 17.03.2023 got default bail in the said DRI Case No. 18/2021-22 / NDPS Case No. 215/2022.

31. It is seen that affidavit in this bail application has been sworn by Smti. Chonghoi Haokip wife of the petitioner, one of the charge sheeted accused in said NDPS Case No. 215/2022, who is out in default bail in the said case.

32. After hearing the learned counsels for the parties and considering the judgments placed by both the parties, the Court is of the view that the petitioner, namely, Shri Lungsibui Thiumai is entitled for his bail in said NDPS Case No. 215/2022 arising out of DRI Case No. 18/2021-22 presently pending before the Court of learned Additional Sessions Judge, FTC No. 3, Kamrup (Metro), Guwahati and accordingly, this bail application of the petitioner, in said NDPS Case No. 215/2022 is accepted.

33. Accordingly, the petitioner, namely, Shri Lungsibui Thiumai is allowed to release on bail on furnishing a bail bond of Rs.1,00,000/- in said NDPS Case No. 215/2022 arising out of DRI Case No. 18/CL/NDPS/HEROIN & METH/DRI/ GZU/2021-22 with 2 (two) local sureties of the like amount, one of which has to be a Government Employee (Central and/or State of Assam), to the satisfaction of the learned Additional Sessions Judge FTC No. 3, Kamrup (Metro), Guwahati or learned Special Judge (NDPS), Kamrup (Metro), Guwahati, as the case may be, on the following terms and conditions that -

(i) the accused person, Shri Lungsibui Thiumai shall face trial in said NDPS Case No. 215/2022 without evading the same and appear on each date fixed;

(ii) the said accused person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of this case so as to dissuade him/her from disclosing such fact to the Investigating Officer;

(iii) the accused person shall not tamper with any evidence of this case;

(iv) the accused person shall not indulge him in any offence while remaining on bail;

34. Accordingly, this bail application of the petitioner, Shri Lungsibui Thiumai, under Section 439 Cr.P.C. seeking bail in said NDPS Case No. 215/2022 arising out of DRI Case No. 18/2021-22 stands allowed to the extent above.

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35. However, it is made clear that failure on the part of the petitioner to comply with any of the terms and conditions as specified above, the bail granted to him in the aforesaid NDPS Case No. 215/2022 shall stand automatically vacated.

JUDGE Comparing Assistant