

GAHC010193872021



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

Case No. : Crl.Pet./668/2021

HANUFA NASRIN
D/O HANIF ALI CHOUDHURY
R/O HOWLY TOWN, WARD NO. 3,
P.S. HOWLY
DIST. BARPETA, ASSAM, PIN-781316

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:ABDUL LATIF
S/O ABDUL MALEK
R/O CHAPRA
P.S. BARPETA
DIST. BARPETA
ASSAM
PIN-78130

Advocate for the Petitioner : MR. S C BISWAS

Advocate for the Respondent : PP, ASSAM

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Date of hearing & judgment : **23.11.2021**

JUDGMENT & ORDER (ORAL)

Heard Shri S.C. Biswas, learned counsel along with Shri F.A. Hassan, learned counsel for the petitioner. The respondent No. 1 State is represented by Shri R.J. Baruah, learned Additional Public Prosecutor, Assam. Though, the informant has been arrayed as the respondent No. 2. In view of the settled law holding the field, this Court is of the view that no notice is required to be issued to the respondent No. 2. In fact, the time which would be consumed for such notice to be served, immense prejudice would be suffered by the petitioner.

2. The instant application has been filed under Section 482 of the Cr.P.C. challenging a series of orders namely, orders dated 30.09.2021, 26.10.2021 and 11.11.2021 passed by the learned Court of Sessions Judge, Barpeta in Sessions Case No. 129/2021. By the impugned order dated 26.10.2021, while framing charges against the petitioner, he was again remanded to the judicial custody till 11.10.2021, on the same date, the petition filed for releasing the petitioner on bail has been rejected. By the second order dated 26.10.2021, the prayer for bail has been rejected with the observation that the offence was grave and the evidentially material in the record and the quantum of punishment likely to be inflicted upon the accused if she is convicted do not justify the grant of bail. By the order dated 11.11.2021, the petition filed on behalf of the petitioner for allowing to submit the bail bond pursuant to the order of the learned CJM granting bail has been rejected on the ground that trial has already commenced and bail petition filed before that Court was rejected.

3. It is the case of the petitioner that in connection with Barpeta P.S. Case No. 413/2021 under Section 302 of the IPC, the petitioner, who was arrested, had filed an application seeking bail. The said bail was considered on 28.05.2021 and coming to a conclusion that the Final Form was yet to be submitted and the mandatory period was over, the petitioner was allowed to go on bail of Rs.10,000/- (Rupees Ten Thousand) with one surety of like amount. It is the case of the petitioner that though default bail was granted to him, he was not in a position to arrange the surety and other formalities and the same could be done only on 30.09.2021. However, the learned CJM, Barpeta had rejected the prayer by the aforesaid

orders.

4. It is the legality and validity of the orders, which is the subject matter of challenge in the present proceeding.

5. Considering the settled law in subject, this Court is of the opinion that the present petition is required to be disposed of at the motion stage itself as issuing notice would not serve any purpose and would rather be to the prejudice of the petitioner.

6. The law in this field is well settled by a number of Judgments by the Hon'ble Supreme Court as well as various High Courts. The provision of bail as laid down in Section 167 of the Cr.P.C. has been held to be a mandatory provision and has been termed as the "default bail". It has been settled that if the investigation is not over and the charge sheet is not able to be filed within the prescribed period depending on the nature of the offence, the accused would be entitled to the privilege of default bail. In this connection, the following case laws may be referred to:

- i. ***AIR 2001 Supreme Court 1910 : Uday Mohanlal Acharya Vs. State of Maharashtra***
- ii. ***AIR Online 2020 SC 607: S. Kasi Vs. State***

7. In the case of ***Uday Mohanlal Acharay (Supra)***, the Hon'ble Supreme Court has held that the right to be released on bail under Section 167 (2) Proviso (a) is indefeasible right and subsequent filing of charge sheet does not distinguish the right accrued by an accused to be released on bail.

8. In the case of S. Kasi (Supra), the Hon'ble Supreme Court has reiterated the aforesaid position of law. In fact, the Hon'ble Court has held that denial of bail on the ground that charge sheet could not be submitted within the prescribed period due to restrictions imposed during lockdown is clearly erroneous and not an accordance with law.

9. In the instant case, it is seen that indeed the petitioner was granted default bail by the learned CJM, Barpeta, vide the order dated 28.05.2021. However, due to the fact that the petitioner could not arrange the surety and other formalities, he was not released from custody. However, once the formality is fulfilled including the bail bond, the learned Court was

clearly in error holding that since the charge sheet has been filed in the meantime, the provisions of default bail would not be applicable. The said finding is not on the erroneous but against the settled law laid down by the Hon'ble Supreme Court, while interpreting the provisions of the Section 167 (2) of the Cr.P.C. as indicated above.

10. In view of the above, the present application is allowed and the impugned orders dated 30.09.2021, 26.10.2021 and 11.11.2021 are set aside.

11. Since, it is seen that the petitioner had fulfilled the conditions imposed by the learned CJM, Barpeta while granting default bail vide the order dated 28.05.2021, the petitioner be released forthwith by the learned Court by reconfirming the fulfillment of the conditions. It is needless to state that the petitioner shall continue to render full cooperation in the trial and / or not indulge any activities detrimental to the same.

JUDGE

Comparing Assistant