
(2013) 01 GAU CK 0010
In the Gauhati High Court
Case No : B.A. No. 100 (SH) of 2012

Enrita N. Marak

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 11-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 121A, 302

Citation : (2013) 3 Crimes 104

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Advocate : S. Dey, for the Appellant; N.D. Chullai, PP Meghalaya, for the Respondent

Judgement

T. Vaiphei, J.—Both Mr. S. Dey, the learned Counsel for the petitioner and Mr. N.D. Chullai; the learned Public Prosecutor, have been heard at length. This application u/s 439 Cr.P.C. is for granting bail to Shri. Champion R. Sangma who has been detained in custody since 3.9.2012 in connection with Nongstoin P.S. Case No. 10(2) of 2012 under Sections 121A/ 302/ 34. I.P.C. read with Section 10/ 13 U.A. (P) Act 1967 and 27 of Arms Act.

2. The case of the accused as projected by Mr. S. Dey, the learned Counsel for the petitioner is that even after the lapse of 90 (ninety) days, the police has failed to submit the charge-sheet till now and as such the accused is entitled to be released on bail by invoking the proviso (a) (i) sub-Section (2) of Section 167, Cr.P.C. Opposing the bail application. Mr. N.D. Chullai, the learned Public Prosecutor submits that even though the charge-sheet could not be submitted by the police within 90 (ninety) days, the bail application of the accused cannot notwithstanding the newly inserted proviso be allowed as any possible lapse on the part of the police to file the charge-sheet within 90 days is saved by the proviso to sub-section (5) of Section 43D of the Unlawful Activities (Prevention) Amendment Act, 2008, which says that the accused shall not be released on bail

if the Court, on a perusal of the case diary or the report made u/s 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against him is prima facie true. The learned Public Prosecutor takes me to the statements of the witnesses recorded by the police heretofore during investigation and submit that the evidence collected by the police till now are more than sufficient to convict the accused of the offences charged against him. The learned Public Prosecutor also emphasizes time and again that the accused is involved in terrorist activities and creating a reign of terror in Meghalaya, particularly, in Garo Hills, and to release him on bail at this stage will enable to continue unlawful activities in the State. He, therefore, strenuously urges this Court to keep the public interest in mind and to reject the application. I have given my anxious consideration to the objection raised by the learned Public Prosecutor. As already noticed, the existing proviso to sub-section (2) of Section 167, Cr.P.C. has now been modified by Section 43D of the Unlawful Activities (Prevention) Amendment Act, 2008, Section 43D of this Amendment reads thus:

43D. Modified application of certain provisions of the Code--Notwithstanding anything contained in the code or any other law every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of Clause (c) of Section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2):

(a) the references to "fifteen days, ninety days" and sixty days wherever they occur shall, shall be construed as references to "thirty days," and "ninety days" respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:

Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:

Provided also that if the police officer making the investigation under this Act, requests for the purposes of investigation for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that:

(a) the reference in sub-section (1) thereof.

(i) to "the State Government" shall be construed as a reference to "the Central

Government or the State Government".

(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be", and

(b) the reference in sub-section (2) thereof to "the State Government" shall be construed as a reference to "the Central Government or the State Government, as the case may be".

(4) Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release.

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made u/s 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.

3. In terms by the above amendment, it is provided that it is even if it is not possible to complete the investigation of the case relating to Unlawful Activities (Prevention) Act, 1967 within a period of 90 (ninety) days as mentioned in proviso (a)(i) sub-section (2) to Section 167, Cr.P.C., if the Court is satisfied from the report of the Public Prosecutor that there is progress in the investigation and that there are specific reasons for further detention of the accused beyond the said period of 90 days, it may extend the period of his detention up to 180 days. Thus, the Court has now been given, in respect of the offence relating to the Unlawful Activities (Prevention) Act, the power to extend the period of detention of the accused from 90 days up to 180 days subject to satisfactory report of the learned Public Prosecutor indicating the progress of the investigation and the existence of specific reasons for his further detention up to 180 days even after the expiry of 90 days of his initial detention. If the police are of the opinion that the investigation cannot be completed within the next 90 days despite their best efforts, it may ask the Public Prosecutor to submit a report to the jurisdictional

Magistrate indicating therein the progress of the investigation and the existence of specific reasons for further detention of the accused beyond 90 days and up to a maximum of 180 days. In the instant case, there is no dispute that no such report was submitted by the learned Public Prosecutor to the jurisdictional Magistrate indicating the progress of the investigation. That being the undisputed position, the question of extending the period of detention from 90 days to a maximum period of 180 days does not arise. As far as the proviso to sub-section (5) of Section 43D of the Unlawful Activities (Prevention) Amendment Act, 2008 is concerned, upon which heavy reliance is placed by the learned Public Prosecutor to deny default bail to the accused, this provision, in my opinion, will operate in a different field i.e. when a regular bail application is filed on merit before the expiry of 90 days or before the expiry of 180 days, if his detention is extended, whether charge-sheet has been submitted or not. Having failed to avail of the provision of the newly inserted proviso referred to earlier, the police cannot take recourse to the proviso to sub-Section (5) of Section 43D of the new Amendment to deny statutory default bail to the accused. If the construction placed by the learned Public Prosecutor upon Section 43D is accepted, then the proviso newly added/read into sub-section (2) of Section 167, Cr.P.C. by the Unlawful Activities (Prevention) Amendment Act, 2008 will be rendered otiose, which is impermissible. It is a cardinal principle of interpretation of statute that no part of a statute shall be brushed aside as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In the interpretation of statutes, the Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. It must be remembered that the concert of default has not been wiped out of Section 167, Cr.P.C. by virtue of the Unlawful Activities (Prevention) Amendment Act, 2008. Thus, the question of extending the period of detention of the accused from 90 days to 180 days cannot arise on the fact of this case. The accused is, therefore, entitled to be released on bail in default of submission of charge-sheet by the police within 90 days. The accused is accordingly released on bail on his execution of a P.R. Bond of Rs. 50,000 (Rupees Fifty Thousand) only with one surety, who shall be a Government servant not below the rank of Class-III of the like amount to the satisfaction of the learned Addl. Deputy Commissioner, Nongstoin. As and when he is released from custody, the accused shall appear before the Superintendent of Police, East Khasi Hills District, Shillong once a week at the time and place to be fixed by the Superintendent of Police, Kasi Khasi Hills, Shillong.