

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL
Criminal Revision Petition No. 7 of 2020**

1. **Mr. Jamkhomang Baite**, aged about 40 years, S/O Mr. Lhunkhomang Baite of Sangdo Village, P.O. & P.S. Churachandpur, District - Churachandpur, Manipur– 795128.
2. Mr. Thankhohao Baite, aged about 26 years, S/O Mr. Lhunkhomang Baite of Sangdo Village, P.O. & P.S. Churachandpur, District - Churachandpur, Manipur– 795128.

... Petitioners

-Versus-

The State of Manipur through the Chief Secretary, Government of Manipur, Manipur Secretariat, P.O. & P.S. Imphal, Imphal West District, Manipur – 795001.

... Respondent

**B E F O R E
HON'BLE MR. JUSTICE KH. NOBIN SINGH**

For the petitioners	::	Shri Ph. Sanajaoba, Advocate
For the respondent	::	Shri Athouba Khaidem, GA
Date of Hearing	::	19-01-2021
Date of Judgment & Order	::	28-01-2021

JUDGMENT AND ORDER

[1] Heard Shri Ph. Sanajaoba, learned Advocate appearing for the petitioners and Shri Athouba Khaidem, learned GA appearing for the respondent.

[2] By this criminal revision petition, the petitioners have prayed for modifying the order dated 28-8-2020 passed by the learned Special Judge (ND & PS), Manipur in Cril. Misc (B) Case No.192 of 2020.

[3] According to the petitioners, they were arrested by a combined

team of the police and the personnel of 12th Assam Rifles in connection with a case registered under FIR No. 24(2)2020 TPL-PS, u/s 21(C)/29/60(3) ND & PS at MVCP Sita Junction, Tengnoupal on 29-02-2020. When they were produced before the Court on 01-03-2020, they were remanded to police custody till 06-03-2020 on which they were remanded to judicial custody and since then, they had been in the custody for a total period of 296 days.

[4] On the expiry of the statutory period, the petitioners filed a joint application before the learned Special Judge (ND & PS), Manipur under Section 167(2) Cr.P.C. for releasing them on default bail/ statutory bail and the same was registered as Cril. Misc (B) Case No.192 of 2020. The learned Special Judge (ND & PS) vide its order dated 28-08-2020 was pleased to release the petitioners on bail but unfortunately, while releasing them on bail, the learned Special Judge (ND & PS) imposed certain conditions vide his order dated 28-08-2020, the relevant portion thereof reads as under:-

"Thus, the accused persons are entitled to bail. They are hereby released on bail subject to their furnishing P.R. bond of Rs. 5,00,000/- each with one surety of like amount who shall be Gazetted officer. The accused persons also shall deposit a sum of Rs. 2,00,000/- each to the Court refundable after disposal of the trial. The accused shall co-operate with the investigation, shall not commit any offence while on bail and shall not leave the State without permission of the Court."

[5] Being aggrieved by the said order dated 28-08-2020 passed by

the learned Special Judge (ND & PS), Manipur, the instant criminal revision petition has been filed by the petitioners.

[6] During the course of hearing, it has been submitted by the learned counsel appearing for the petitioners that the issue involved herein has already been decided by this Court and in terms thereof, the instant criminal revision petition can be allowed modifying the order dated 28-08-2020 passed by the learned Special Judge (ND & PS), Manipur.

[7] In **Jangpao Haokip Vs. State of Manipur, Crl. Petn No.28 of 2020**, the facts of which are similar to that of the present case, this Court vide its judgment and order dated 21-12-2020 has held that when the default bail, statutory bail is granted, no condition can be imposed by the Court in view of the law laid down by the Hon'ble Supreme Court, the relevant paragraphs of which read as under:

*“[6] During the course of the hearing, it has been vehemently submitted by Smt. H. Bisheshwari, the learned counsel appearing for the petitioner that the issue involved herein has already been decided by the Hon'ble Supreme Court on 15-10-2020 in **Saravanan Vs. State represented by the Inspector of Police, Criminal Appeal No.681-682 of 2020** and therefore, the instant petition is liable to be allowed by this Court. On the contrary, it has been submitted by Shri Y. Ashang, the learned PP that the said decision has not been rendered by the Hon'ble Supreme Court in an issue arising out of the provisions of the ND & PS Act, for which he has relied upon the decision rendered by the Hon'ble Supreme Court in **Union of India Vs. Thamisharasi & ors, (1995) 4 SCC 190.***

[7] On perusal of the said decision rendered by the Hon'ble Supreme Court in Saravanan (supra), the contention of the learned counsel appearing for the petitioner appears to be correct. The issue involved therein was whether while releasing the appellant accused therein on default bail/ statutory bail under Section 167 (2) CR.P.C, any condition of deposit of amount as imposed by the High Court, could have been imposed ? The answer of the Hon'ble Supreme Court was in the negative and held:

"9. Having heard the learned counsel for the respective parties and considering the scheme and the object and purpose of default bail/statutory bail, we are of the opinion that the High Court has committed a grave error in imposing condition that the appellant shall deposit a sum of Rs.8,00,000/- while releasing the appellant on default bail/statutory bail. It appears that the High Court has imposed such condition taking into a consideration the fact that earlier at the time of hearing of the regular bail application, before the learned Magistrate, the wife of the appellant filed an affidavit agreeing to deposit Rs.7,00,000/-. However, as observed by this Court in catena of decisions and more particularly in the case of Rakesh Kumar Paul (supra), where the investigation is not completed within 60 days or 90 days, as the case may be, and no chargesheet is filed by 60th or 90th day, accused gets an "indefeasible right" to default bail, and the accused becomes entitled to default bail once the accused applies for default bail and furnish bail. Therefore, the only requirement for getting the default bail/statutory bail under Section 167(2), Cr.P.C. is that the accused is in jail for more than 60 or 90 days, as the case may be, and within 60 or 90 days, as the case may be, the investigation is not completed and no chargesheet is filed by 60th or 90th day and the accused applies for default bail and is prepared to furnish bail. No other condition of deposit of the alleged amount involved can be imposed. Imposing such condition while releasing the accused on default bail/ statutory bail would frustrate the very object and

purpose of default bail under Section 167(2), Cr.P.C. As observed by this Court in the case of Rakesh Kumar Paul (supra) and in other decisions, the accused is entitled to default bail/statutory bail, subject to the eventuality occurring in Section 167, Cr.P.C., namely, investigation is not completed within 60 days or 90 days as the case may be, and no chargesheet is filed by 60th or 90th day and the accused applies for default bail and is prepared to furnish bail.”

While allowing the appeal, the Hon’ble Supreme Court directed that the appellant shall co-operate with the investigating agency and shall report the concerned police station as and when called for investigation/ interrogation and on non-cooperation, the consequences including cancellation of the shall follow.

[8] It may be noted that the Hon’ble Supreme Court has decided only the issue relating to the release of an accused on default bail/ statutory bail under Section 167 (2) Cr.P.C irrespective of the nature of the offence alleged to have been committed by the accused. In other words, the provisions of Section 167 (2) Cr.P.C have been construed to mean that no other condition of deposit of alleged amount can be imposed. The decision rendered by the Hon’ble Supreme Court in Thamisharasi (supra) does not help the learned PP appearing for the respondents at all, rather it has helped the case of the petitioner. In Thamisharasi also, it has been held by the Hon’ble Supreme Court that Section 167 (2) has been expressly applied by Section 36-A of the NP & PS Act, the scheme of which is that the provisions of the Cr.P.C would apply except where there is any inconsistent provision in the ND & PS Act in relation to the arrest made under the Act. The relevant paragraphs of the said decision read as under:

“8. Section 36-A makes it clear that a person accused of or suspected of the commission of an offence under the NDPS Act is to be forwarded to a Magistrate under sub-section (2) or sub-

section (2-A) of Section 167 CrPC; and the Special Court constituted under Section 36 of the Act exercises, in relation to the person so forwarded to it, the same power which a Magistrate having jurisdiction may exercise under Section 167 CrPC in relation to an accused person forwarded to him under that Section. The clear reference to the power of the Magistrate under Section 167 CrPC, particularly sub-section (2) thereof, is an indication that no part of sub-section (2) of Section 167 of the Code is inapplicable in such a case unless there be any specific provision to the contrary in the NDPS Act. This conclusion is reinforced by some other provisions of the NDPS Act. Section 36-C says that "save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court." This also indicates that the provisions in the Code of Criminal Procedure relating to bail and bonds are applicable to the proceedings before a Special Court under the NDPS Act "save as otherwise provided in this Act." Section 51 also says that the provisions of the Code of Criminal Procedure, 1973 shall apply, insofar as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act. Except for Section 37 of the N.D.P.S. Act, no other provision of the NDPS Act is relied on to contend that there is any inconsistent provisions in the NDPS Act to exclude the applicability merely of the proviso to sub-section (2) of Section 167 CrPC when sub-section (2) of Section 167 of the Code is made expressly applicable by Section 36-A of the NDPS Act.

9. The question, therefore, is: Whether Section 37 of the NDPS Act is an inconsistent provision of this kind to exclude the applicability merely of the proviso to sub-section (2) of Section 167 CrPC when sub-section (2) of Section 167 is expressly made applicable by the NDPS Act? The non- obstante clause at the beginning of sub-section (1) of Section 37 indicates that the

provisions in clauses (a) and (b) thereof are inconsistent with the corresponding provisions of the Code. Clause (a) makes every offence punishable under this Act to be cognizable. Clause (b) imposes limitations on granting of bail specified therein which are in addition to the limitations under the Code of Criminal Procedure on granting of bail as stated in sub-section (2) of Section 37. Clause (b) of sub-section (1) specifies the two limitations on granting of bail, namely, (1) an opportunity to the Public Prosecutor to oppose the bail application, and (2) satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. The learned Additional Solicitor General contends that these limitations on granting of bail specified in clause (b) of sub-section (1) of Section 37 indicate that the applicability of the proviso to subsection (2) of Section 167 CrPC is excluded in such cases. We are unable to accept this contention.

10. The limitations on granting of bail specified in clause (b) of sub-section (1) of Section 37 come in only when the question of granting bail arises on merits. By its very nature the provision is not attracted when the grant of bail is automatic on account of the default in filing the complaint within the maximum period of custody permitted during investigation by virtue of sub-section (2) of Section 167 CrPC. The only fact material to attract the proviso to sub-section (2) of Section 167 is the default in filing the complaint within the maximum period specified therein to permit custody during investigation and not the merits of the case which till the filing of the complaint are not before the court to determine the existence of reasonable grounds for forming the belief about the guilt of the accused. The learned Additional Solicitor General submitted that this belief can be formed during investigation by reference to the contents of the case diary even before the charge-sheet has been filed. This is fallacious. Till the complaint is filed the accused is supplied no material from which he can discharge the burden

placed on him by Section 37(l)(b) of the NDPS Act . In our opinion, such a construction of clause (b) of sub-section (1) of Section 37 is not permissible.

11. Sub-section (3) of Section 36-A provides that the special powers of the High Court regarding bail under Section 439 of the Code of Criminal Procedure shall not be affected by anything contained in Section 36-A of the NDPS Act . Sub-section (2) of Section 167 CrPC has been expressly applied by Section 36-A of the Act and the scheme of the Act is that the provisions of the Code would apply except where there is any inconsistent provision in this Act in relation to arrests made under this Act. It is this context in which Section 37(l)(b) has to be construed wherein are specified the limitations on granting of bail. We must, therefore, look to the corresponding provision in the Code of Criminal Procedure with which Section 37(1) (b) of the Act can be treated to be inconsistent. In the Code of Criminal Procedure, it is Section 437 and not Section 167 which is the corresponding provision for this purpose. The corresponding limitation on grant of bail in case of non-bailable offence under Section 437 is as follows:

"(i) such person shall not be so re-leased if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;"

In other words, under Section 437 of the Code the person is not to be released on bail "if there appear reasonable grounds for believing that he has been guilty of an offence....." while according to Section 37 of the NDPS Act, the accused shall not be released on bail unless "the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence.....". The requirement of reasonable grounds for belief in the guilt of the accused to refuse bail is more stringent and, therefore, more beneficial to the accused than the requirement of reasonable grounds for the belief that he is not guilty of the offence

under Section 37 of the NDPS Act. Under Section 437 CrPC, the burden is on the prosecution to show the existence of reasonable grounds for believing that the accused is guilty while under Section 37 of the Act the burden is on the accused to show the existence of reasonable grounds for the belief that he is not guilty of the offence. In the first case, the presumption of innocence in favour of the accused is displaced only on the prosecution showing the existence of reasonable grounds to believe that the accused is guilty while under the NDPS Act it is the accused who has to show that there are reasonable grounds for believing that he is not guilty.”

[8] In view of the above, this Court is of the view that the issue involved herein is covered by the judgment and order passed by this Court as aforesaid. The instant Cril. Rev. Petition stands allowed and consequently, the impugned order dated 28-08-2020 passed by the Special Judge, ND & PS, Manipur is partly quashed and set aside except the portion thereof to the extent that petitioners are granted bail, with the following directions;

- (a)** The petitioners shall be released on default bail/ statutory bail provided they are ready to furnish PR bonds to the satisfaction of the Special Judge, ND & PS, Manipur;
- (b)** The petitioners shall co-operate with the investigating agency and shall report the concerned police station as and when called for investigation/ interrogation;
- (c)** On non-cooperation, the consequences including the cancellation of the bail shall follow, for which it is open to the

police to move appropriate application before the Special Court,
ND & PS, Manipur;

- (d) The petitioners shall not leave the State of Manipur without the
leave of this Court.

JUDGE

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Victoria