

GAHC010200842022



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

Case No. : Crl.Rev.P./488/2022

SUBHRA JYOTI BHARALI
S/O SRI BHABANANDA BHARALI
R/O LANKESWAR PASCHIM JALUKBARI, GUWAHATI- 781014, ASSAM

VERSUS

THE DIRECTORATE OF ENFORCEMENT
GUWAHATI ZONE- I, RAJGARH ROAD,
GUWAHATI- 781003

Advocate for the Petitioner : MR. D DAS SR. ADV

Advocate for the Respondent : SC, ED

:: PRESENT ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioner : Mr. D. Das,
Senior Advocate.

For the Respondent : Mr. R. Dhar,
Standing Counsel, E.D.

Date of Hearing : 21.10.2022.
Date of Judgment : 27.10.2022

O R D E R (CAV)

Heard Mr. D. Das, learned senior counsel appearing for the petitioner.
Also heard Mr. R. Dhar, the learned Standing Counsel, E.D.

2. This is an application under Section 397 of the Code of Criminal Procedure read with Section 401 of the said Code whereby the order dated 12.09.2022 passed by the learned Special Judge, Assam, Kamrup(M), Guwahati in Special (PMLA) Case No.41/2022 is put to challenge.

3. The short question that is to be decided by this Court is as to whether, after filling of a complaint and when the further investigation is still pending, the petitioner is entitled to default bail under Section 167(2) of the CrPC.

4. The petitioner is the Managing Director of Industrial Co-operative Bank Limited. An allegation has been made against him and 7 other persons alleging that the petitioner has misappropriated a sum of Rs.9,50,61,499/-. In the FIR itself, it has been specifically shown as under on what heads the money was misappropriated-

Sl. No.	Head of Accounts	Amount
1.	Illegal Remuneration to Chairman and Directors of the Board	1788750.00
2.	Illegal Overdraft Facility to Chairman	1400000.00
3.	Salary, Incentive, TA to Field Executive against collection of money for the Bank	91772749.00
4.	Illegal payment to accused No.2 from	100000.00

	sundry creditors of Bank	
	Total	9,50,61,499.00

5. The FIR has named 7(seven) other persons but none of them are arrested yet. Only the petitioner has been arrested and he has now spent 120 days in judicial custody.

6. On 20.08.2022, the complaint (charge sheet in CrPC parlance) was filed against the petitioner wherein it is stated that further investigation is pending in the case, so far as the other persons are concerned. The E.D. even published a press release on 22.08.2022 stating that further investigation is under progress.

7. The petitioner now claims that in view of Section 65 of the PMLA Act of 2002, he is entitled to default bail under Section 167(2) of the CrPC.

8. The learned counsel Mr. Das, submits that the respondent has taken up a pick and choose method to harass the present petitioner. According to Mr. Das, the so-called complaint has been filed against the petitioner so that he loses his right to be released on bail. Mr. Das has submitted that it is an admitted fact that investigation is not yet complete and still going on and therefore, the so-called filling of the complaint would never prevent the petitioner from seeking default bail under Section 167(2) of the CrPC.

9. *Per contra*, Mr. Dhar submits that under Section 44(2) of the PMLA Act of 2002, the respondent is empowered to further investigate the matter and any future complaint would be included in the initial complaint.

10. I have given my anxious considerations to the submissions made by the learned counsel of both sides.

11. Section 173 of the CrPC does not prescribe piecemeal investigation and filing of incomplete charge sheet before the court. Section 173(8) CrPC prescribes that even after filing of charge sheet further investigation can be done. In that case, if the investigating officer gathers additional evidence, he can produce it after filing of the charge sheet. The law does not permit the State to expand the maximum period stipulated under Section 167(2) CrPC by filing supplementary charge sheet.

12. This Court has the reason to hold that the incomplete complaint (charge sheet in CrPC parlance) filed against the petitioner is against the law stipulated by Section 173 CrPC because law does not permit piecemeal investigation. Therefore, this Court holds that the petitioner is entitled to bail under Section 167(2) of the CrPC because investigation of the case is not yet complete.

13. For the said reasons, the petitioner Sri Subhra Jyoti Bharali is allowed to go on bail of Rs.1,000,00/- (Rupees One Lakh) with a surety of like amount to the satisfaction of the learned Special Judge, Assam, Kamrup(M), Guwahati subject to the following conditions:

- (i) Petitioner shall not leave the country without prior permission of the PMLA, Court, Kamrup (Metro), Guwahati.
- (ii) Petitioner shall not tamper with the evidence in any manner.
- (iii) Petitioner shall not try to contact any witness directly or indirectly nor shall influence any witness in any manner.

- (iv) Petitioner shall surrender his passports, if any, in the court.
- (v) Petitioner shall co-operate with the investigation as and when required by the IO.

JUDGE

Comparing Assistant