

GAHC040012422023



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

Case No. : Crl.Petn./166/2023

Ippe Tachung
S/o Shri Tamuk Tachung, a Permanent resident of Kendra Vidyalaya, Yoj-Yora, Aalo,
West Siang District, Arunachal Pradesh.

VERSUS

THE STATE OF AP and Anr.
Represented through the Ld. Public Prosecutor 2:Smti Tongam Buchi
Age: 0
Occupation

Advocate for the Petitioner : G Kato

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 13-12-2023

Heard Mr. G. Kato, learned counsel for the petitioner. I have also heard Mr. T. Ete, learned Additional Public Prosecutor for the State and Ms. J. Doji, learned counsel for the respondent No. 2/informant.

2. By filing this petition under Section 482 of the Cr.P.C, 1973, the petitioner challenged the order, dated 30.08.2023, passed by the learned Special Judge,

(POCSO), East Siang District, Pasighat in PSG SC (POCSO) Case No. 09/2021 (State of Arunachal Pradesh Vs. Toli Pale) by which the bail granted to the alleged accused earlier on 08.02.2022 has been cancelled on the ground that the accused is not cooperating with the trial of the case.

3. The learned counsel for the petitioner submits that the accused was granted a default bail on 08.02.2022 and thereafter, he has been cooperating and attending the trial for every day. Only on few occasions the learned defence counsel for the accused remain absent due to which the case was adjourned. However, by the impugned order, dated 30.08.2023, the learned Court below has cancelled the bail granted to the accused on 08.02.2022 only on the ground that the accused is not cooperating with the trial and adjourned the case from time to time. The learned counsel for the petitioner further submits that before the cancellation of the bail granted to the accused, the learned Court is under obligation to issue notice to the accused explaining as to why the bail granted to him should not be cancelled, the accused should also be given an opportunity of hearing; however, in the instant case, the learned Court below has cancelled the bail granted to the accused unilaterally without hearing the accused. Hence, prays for setting aside and quashing the impugned bail cancellation order and to allow the accused to remain under previous bail.

4. As called for by this Court, the learned Additional Public Prosecutor, Mr. T. Ete, has produced the scanned copy of the LCR and I have perused the same.

5. The learned Additional Public Prosecutor, Mr. Ete, fairly submits that as per the record, the accused has been attending the trial of the case regularly without absent, however, on 4 (four) occasions, the learned defence counsel for the accused remained absent due to which the case was adjourned. He further fairly submits that before passing the cancellation order, there is no record

showing that the accused was given any opportunity of hearing which implied the violation of the principle of natural justice.

6. Ms. J. Doji, learned counsel for the respondent No. 2 conceded with the submissions of the learned counsel for the petitioner as well as the learned Additional Public Prosecutor.

7. In view of contentions made and the submission made by the learned counsel for the parties, the order cancelling the bail granted to the accused unilaterally, without hearing the accused, is hereby, interfered with and the same is, hereby quashed and set aside.

8. The accused is, hereby, directed to be release from the custody and he is allow to remain on previous bail granted to him by an order, dated 08.02.2022, on the same terms and condition.

9. With the above, this petition is allowed and disposed of.

JUDGE

Comparing Assistant