

GAHC040012482022



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

Case No. : Crl.Petn. 107/2022

1:Amit Kumar Das
Son of Bateswar Das,
Residing at Premises being no. L82/J, Mogal Bagan Rail Quarter. Narkeldanga Main
Road, Narkeldanga, Kolkata 700011, West Bengal

VERSUS

1:THE STATE OF AP and Anr.
Represented by PP (AP)

2:Wokim Mungray
Sub Inspector of Police
Investigating Officer
in CB PS Case No. 05/2022
CB PS (SIT) PHQ Itanagar 791111
Arunachal Pradesh

Advocate for the Petitioner : Abhai Kumar Singh

Advocate for the Respondent : P P of AP

**BEFORE
HONBLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 16.02.2023

Heard Mr. A. K. Singh, learned counsel for the petitioner. Also heard Mr. J. Tsering, learned Public Prosecutor for the State.

2. The petitioner has preferred an application under Section 397/399/401/482 Cr.P.C., 1973, against the impugned order dated 14.07.2022 passed by the learned Judicial Magistrate First Class-cum-Civil Judge, Yupia in connection with CB-PS Case No. 05 of 2022 (Corresponding G.R. No. 24/2022) under Section 120(B)/419/420/468/471/34 IPC.

3. The learned counsel for the petitioner has submitted that the case registered against the present petitioner are Section 120(B)/419/420/468/471/34 IPC and the punishment of which are 7(seven) years or below 7(seven) years for which, issue of notice under Section 41 A Cr.P.C. is mandatory as per the judgment of the Hon'ble Supreme Court in *Arnesh Kumar Vs State of Bihar*, reported in (2014) AIR (SC) 2756.

4. Another contention argued by the learned counsel for the petitioner is that a written complaint was filed by the complainant on 25.04.2022 and the same was received on 28.04.2022, whereas the F.I.R. was registered on 29.04.2022. There is no explanation regarding the delay of one day in registering the case, which is gross negligence as well as against the principles of law as enumerated in *Lalita Kumari Vs Government of Uttar Pradesh & Ors.*, reported in (2008) 14 SCC 337.

5. On the other hand, the learned Public Prosecutor has argued that the case of the *Arnesh Kumar (Supra)* is applicable in the case of the arrested person only and the instant case does not fall within the category of the case as mentioned by the learned counsel for the petitioner.

6. It is also submitted that this is not the proper forum wherein, the petitioner has approached for relief. The petitioner may approach before the concerned Court for recalling of the warrant of arrest.

7. I have considered the submissions made by the learned counsels appearing for the parties.

8. The allegation against the present petitioner is that he has misappropriated huge amount of money of the complainant, for which, CB-PS Case No. 05 of 2022 was registered along with some other accused. The bail was granted to 2(two) other accused as reported by the learned counsel for the petitioner. While perusing the record that the pre-arrest bail of the present petitioner was rejected by this Court after perusal of the Case Diary. It transpires that the petitioner is evading arrest. He has not surrendered before the Court and as such, the prayer was made by the I/O to issue warrant of arrest and the Court had allowed the prayer of the I/O by issuing warrant of arrest against the present petitioner.

9. The learned counsel for the petitioner also submits that liberty may be given to the petitioner to approach before the Court of JMFC, Yupia for recalling of the warrant of arrest.

10. In view of the above, without further going to the merit of the case as well as any irregularity in the order passed by the learned JMFC, Yupia, the

instant criminal petition is disposed of with a direction to the present petitioner to approach before the Court of the learned JMFC, Yupia for recalling of warrant of arrest.

The criminal petition is disposed of with the above direction.

JUDGE

Comparing Assistant