

GAHC010032352023



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

Case No. : Crl.Pet./148/2023

PABITRA SAIKIA
S/O LATE MURULI SAIKIA
R/O VILL- BAMGAON
P.O. GOHAIN
PS. DHEMAJI
DIST. DHEMAJI, ASSAM
PIN-787057

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:SRI DEBASISH BAISHYA
S/O LATE ARUNODAY BAISHYA
THE THEN SUB DIVISIONAL OFFICER (CIVIL)
DHAKUAKHANA

Advocate for the Petitioner : MR. N K KALITA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 17-02-2023

Heard Mr. N. K. Kalita, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent No. 1.

This is an application under Section 482 *read with* Sections 397/401 of the Code of Criminal Procedure, praying for recalling of the NBWA issued against the present petitioner by the learned SDJM(M), Dhakuakhana, in PRC Case No. 144/2022, in connection with Charge-Sheet No. 54/2022, dated 30.05.2022, wherein, the petitioner is shown as an absconder.

It is submitted by the learned counsel for the petitioner that the Charge-Sheet was filed against the 3 (three) accused persons and out of which, the present petitioner is shown as absconder in the Charge-Sheet. He obtained the anticipatory bail from this Court on 13.02.2017 and accordingly, as per the direction of this Court, he appeared before the I.O. and co-operated in the investigation of the case. But, with some *mala fide* intention, the new I.O. of the case, after the transfer of the earlier I.O., is harassing the petitioner in spite of his co-operation in the present case and for which, he had to file a complaint before the Additional Director of Police and on the basis of his complaint, the Additional Director of Police directed the Superintendent of Police, Lakhimpur, to look into the matter regarding the complaint lodged by the present petitioner. Coming to know about the filing of the Charge-Sheet, the accused/petitioner

also appeared before the learned SDJM(M), Dhakuakhana, on 21.10.2022 through his engaged counsel seeking time for appearance. But, subsequently, coming to know that the present accused/petitioner has been shown as absconder in the Charge-Sheet and there is every probability of sending him to judicial custody, the petitioner collected all the documents and as he did not appear before the learned SDJM(M) on 06.12.2022, the NBWA was issued against the him and on subsequent date also, i.e. on 21.01.2023, the NBWA was issued against the present accused/petitioner.

The learned counsel for the further submitted that the petitioner is ready and willing to appear before the learned Court below and ready to face the trial. However, he could not appear before the learned Court below as he has already been shown as absconder in the Charge-Sheet and accordingly prayed for recalling the NBWA issued against the petitioner vide orders dated 06.12.2022 & 21.01.2023.

In this context, the learned Additional Public Prosecutor, Mr. P. Borthakur, has submitted that the petitioner may be directed accordingly to appear before the learned SDJM(M) with a fresh application for bail.

Considering the submissions made by the learned counsels of both sides and also considering the materials available in the record, the execution of orders dated 06.12.2022 & 21.01.2023 are hereby stayed and the NBWA issued against the present accused/petitioner are also hereby recalled with a direction to the petitioner to appear before the learned Court below on or before 10.03.2023 with a fresh application for bail and the learned SDJM(M), on his

appearance and on filing a petition for allowing him to go on bail, will consider the same in accordance with law.

The criminal petition stands disposed of in terms of above.

JUDGE

Comparing Assistant