

GAHC010041992023



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

Case No. : Crl.Pet./190/2023

GUNJAR ALI @ GUNJER ALI
S/O LATE MONNAF ALI @ MONNAT ALI
R/O VILL- NO. 2 ODALGURI
P.S. DHALIGAON, P.O. KHAGRABARI
DIST. CHIRANG (BTAD), ASSAM
VERSUS
THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM
2: MOMOTAJ BEGUM
W/O SUKUR ALI
R/O NO. 2 ODALGURI
P.O. KHAGRABARI
P.S. DHALIGAON
DIST. CHIRANG (BTAD)
ASSAM
PIN-78338

Advocate for the Petitioner : MR. A K HUSSAIN
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 01.03.2023

Heard Mr. A.K. Hussain, learned counsel for the petitioner, Gunjar Ali @ Gunjer Ali, who has filed this application under Section 482 Cr.P.C. with prayer for quashing and setting aside the impugned order dated 07.02.2023, passed by the learned Addl. Chief Judicial Magistrate, Chirang, Kajalgaon in PRC Case No.

170/2022 under Sections 120(B)/370 IPC.

2. Also heard Ms. SH Bora, learned Addl. Public Prosecutor for the State respondent No. 1. The learned Addl. PP has accepted notice on behalf of the respondent No. 1 and has received a copy of the petition.

3. It is submitted on behalf of the petitioner that the name of the petitioner is not mentioned in the FIR. The FIR unfolds that some miscreants had kidnapped the informant's daughter and granddaughter. Investigation commenced and charge sheet was laid against the present petitioner alongwith the other co-accused.

4. The petitioner has appended the orders serially from 09.09.2022 up to 07.02.2023. I have perused the copies of the orders marked as Annexure- 3 series.

5. It is submitted that on a careful scrutiny of the order dated 30.12.2022, it clearly depicts that NBWA was not issued against the petitioner. NBWA was issued against Jafar Ali @ Jakir Ali. It is further submitted that without issuing NBWA, P&A was issued against the petitioner.

6. It is submitted that the petitioner is falsely implicated in this case. The petitioner is now willing to face the trial and to appear before the trial court. The petitioner has prayed for quashing the order issuing P&A which was issued

without issuing NBWA.

7. The petitioner has relied on the case of Inder Mohan Goswami and another Vs. State of Uttaranchal and others, reported in (2007) 12 SCC 1 in paragraph 51, which read as follows:

“51. The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants.”

8. The petitioner has also relied on the case of Nazrul Islam, reported in 2008 (1) GLT 979 in paragraphs 23 and 24, which read as follows.

“23. The record of the trial court, in the instant case, does not disclose that the aforesaid provisions of law has been duly complied with by the learned Magistrate and no satisfaction has been recorded justifying the impugned action before issuance of the order of attachment and/ or P/a. The impugned order does not disclose that proper judicial mind was applied before passing the same. Hence, the impugned orders cannot be sustained in the eye of law and accordingly those are set aside and quashed.

24. The petitioner is directed to appear before the learned trial court on the next date fixed and the learned trial court on such

appearance shall consider his prayer for granting him bail, if so made, taking note of the entire facts and circumstances of the case, of course, on such condition as he may think fit and proper to secure his presence."

9. In the instant case, the petitioner is willing to appear before the trial court and to face the trial.
10. The petitioner was absent without steps on 30.12.2022 and P&A was issued on 07.02.2023.
11. Taking a pragmatic view for the disposal of the case without any hindrance, the petition is allowed and the order dated 07.02.2023 of issuance of P&A is hereby set-aside and quashed.
12. The petitioner is directed to appear before the court below immediately and co-operate with the trial.
13. The petition is disposed of.

JUDGE

Comparing Assistant