

GAHC010045252023



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

Case No. : Crl.Pet./227/2023

ZIABUR RAHMAN
S/O SAIDUR RAHMAN
VILL- BANDURA ATI
P.S. KASUA
DIST. NAGAON, ASSAM

VERSUS

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

2:KARENG ENGLINGPI
W/O SRI ASERALI TIRSO
VILL- DELIMBARI
CHINANI
P.S. BOITHALANGSO
DIST. KARBIANGLONG
ASSA

Advocate for the Petitioner : MR M H AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 10-03-2023

1. Heard Mr. M.H. Ahmed, learned counsel for the petitioner Ziabur Rahman. Also heard Mr. B.B. Gogoi, learned Addl. P.P. for the State Respondent.
2. The learned Addl. P.P. has accepted notice on behalf of the respondent No. 1 and has also received a copy of the petition.
3. The petitioner has filed an application under Section 482 Cr.PC with prayer for quashing the charge-sheet and order of the criminal court declaring the petitioner as absconder and issuing Non-Bailable Warrant of Arrest against him in connection with Boithalangso P.S. Case No. 2/2014 (PRC No. 22/2020 under Sections 366/376/34 IPC.
4. I have given my anxious consideration to the submissions at the Bar.
5. It is submitted that charge-sheet was laid on 31.01.2015 being Charge-sheet No. 4/2015 against two accused namely, Md. Mubarak Ali and Md. Zaibur Rahman. The other accused Md. Mubarak Ali is at present married to the victim. The petitioner has been falsely roped in connection with this case in an omnibus manner. He was shown as an absconder in the charge-sheet and immediately vide order dated 28.12.2015 NBWA and P&A was issued against the petitioner by the Magistrate without recording a valid reason.
6. The learned counsel for the petitioner has relied on the decision of this Court in *Sultan Ali & Others v. State of Assam*, reported in 2008 (3) GLT 17 wherein it has been observed that –

“It is, therefore, not correct to suggest, as contended, on behalf of the accused-petitioners, that summon, must be served on an accused before the Court directs issuance of warrant of arrest against him. It is time to make it clear that when a Court, on receiving Charge-sheet, under Section 173(2)(i) CrPC, finds that the accused has absconded, the Court has no obligation to issue summon to such an accused. However, before issuance of warrant of arrest; it must, in every case, assign reasons irrespective of the fact as to whether the warrant has been issued at the first instance or before the date of appearance of the accused, on the basis of the summon issued to him, has expired or in consequence of the failure of the accused to appear, without any lawful excuse, in the Court in terms of the directions given in the summon served upon him.”

7. It is also submitted on behalf of the petitioner that vide order dated 03.02.2023 warrant has been issued against the petitioner. During the pendency of the proceeding the

petitioner was not aware that a case has been pending against him. It is also submitted that during the pandemic the petitioner was unable to appear before the Court. At present the petitioner is willing to cooperate with the trial.

8. I have perused the order annexed along with the petition. The last order was issuance of NBWA against the petitioner vide order dated 03.02.2023. This case has been pending for appearance of the petitioner. A pragmatic view has to be taken. Further procrastination of the case will be an abuse of the process of the Court as the petitioner is willing to appear and cooperate with the trial and after considering the submission at the Bar, I deem it proper to set aside the order of issuance of NBWA and P&A dated 28.12.2015 and thereafter the subsequent orders upto the order of issuance of NBWA against the petitioner vide order dated 03.02.2023. The petitioner is directed to appear before the Court below immediately and cooperate with the trial.

Petition is disposed of accordingly.

JUDGE

Comparing Assistant