

GAHC010049372023



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

Case No. : Crl.Rev.P./103/2023

RAFIKUL ISLAM AND ANR
S/O LT. HANIFA SHEIKH
R/O NELIPAR, P.S. KAMPUR,
DIST. NAGAON, ASSAM

2: SADDAM HUSSAIN
S/O LT. HANIFA SHEIKH
R/O NELIPAR
P.S. KAMPUR

DIST. NAGAON
ASSA

VERSUS

THE STATE OF ASSAM AND ANR
TO BE REP BY THE LEARNED PP, ASSAM

2:DILWARA KHATUN
W/O HASHIM ALI
R/O SARU RADHA ALI
P.S. DHING DIST.NAGAON
ASSA

Advocate for the Petitioner : MR A W AMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 14-03-2023

Heard Mr. S. Nawaz, learned counsel for the petitioners.

Also heard Mr. K.K.Parasar, learned Additional Public Prosecutor for the State of Assam.

This is an application under section 397 and 401 read with section 482 of the Code of Criminal Procedure, 1973 for suspension of the impugned order dated 20.02.2023, passed by the learned J.M.F.C. Nagaon issuing non-bailable warrant of arrest against the petitioners.

It is submitted by the learned counsel for the petitioners that an F.I.R. was lodged against the petitioners on 23.03.2014. However, address of the respondents/ the present petitioners was given in that F.I.R as resident of Lilipar under Raha Police Station, which is nearly 50 km away from the actual residents of the respondents i.e Nelipar, P.S Kampur, Nagaon and the father's name of the petitioners are also mismatched. So that they were not approached by police and they had no knowledge about the fact of lodging any F.I.R. against them as the address and father's names were wrong. Thereafter, charge-sheet was also filed against them showing them as absconder and from 2016 onwards, non-bailable warrant of arrest issued against them which were returned unexecuted. However, coming to know about the proper address of the respondents/present accused petitioners, the learned J.M.F.C. Nagaon had issued summons to the present accused petitioners which were also returned unserved due to mismatch of the father's name. Accordingly, without any service of the summons, the learned J.M.F.C Nagaon had issued bailable warrant of arrest against the present accused petitioners which received by them after 17.12.2022 and accordingly, after receiving the bailable warrant of arrest issued against the present petitioners, they supposed to appear before the learned Court below but as the charge sheet under section 366 IPC was filed against them, they were

apprehending of arrest and for which they approached the Court of learned Additional Sessions Judge, Nagaon under section 438 Cr.P.C. seeking pre-arrest bail. The record was called for vide order dated 13.02.2023. However, the learned Additional Sessions judge, Nagaon had rejected the prayer for pre-arrest bail. Thereafter, the record was returned to the learned J.M.F.C, Nagaon on 20.02.2023 as the date was not fixed on 20.02.2023, the accused petitioners could not be able to appear before the learned J.M.F.C Nagaon on that very date and on receiving the case record the learned J.M.F.C issued non-bailable warrant of arrest against present accused petitioner vide order dated 20.02.2023.

It is further submitted by the learned counsel for the petitioners that the present accused petitioners are ready to appear before the learned Court below to face the trial but due to non receipt of the summons from the learned Court below they could not appear. Hence, the present petition is filed before this Court.

In this context, the learned APP has submitted that the accused petitioners may be directed to appear before the learned Court below with an application for regular bail.

Considering the submission of learned counsels for both sides and considering the entire aspects of the matter, it is hereby directed to the present accused petitioners to appear before the learned J.M.F.C., Nagaon within 10 (ten) days from today, with a prayer for regular bail and the learned Court below will consider the same on merits.

Till then, the execution of non bailable warrant of arrest issued against the present accused petitioner vide order dated 20.02.2023 be suspended.

With observations made above, the petition stands disposed of.

JUDGE

Comparing Assistant