

GAHC010061482023



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

Case No. : Crl.Pet./265/2023

NEPAL CH SAHA
S/OLATE JATINDRA KR SAHA
VILL- HOJAI TOWN, WARD NO. 14,
P.O. AND P.S. HOJAI
DIST. NAGAON (HOJAI), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR J PAYENG

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 22.03.2023

Heard Mr. J. Payeng, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

This is an application under Section 482 of the Cr.P.C. for recalling the Order dated 21.10.2021 and the subsequent order passed in Sessions Case No. 19/2009, whereby, the learned Assistant Sessions Judge, Karbi Anglong, Diphu, issued NBWA and proclamation against the son of the petitioner, namely, Akas Saha.

It is submitted by the learned counsel for the petitioner, Mr. J. Payeng, that the son of the present petitioner- Akas Saha is an accused in Sessions Case No. 19/2009, pending before the Court of learned Assistant Sessions Judge, Karbi Anglong, Diphu, and at present, he is going through some mental disorder, for which, the petitioner, being the father of the accused, has to file the present petition. It is further submitted that the son of the petitioner was appearing before the Court till 2021; however, due to Covid-19 pandemic, he developed some mental illness and for which, he was irregular in appearing before the Court. On 21.10.2022 also, one petition was filed before the learned Assistant Sessions Judge, Karbi Anglong, Diphu, through his engaged counsel, but the same was rejected and further on 12.01.2023, NBWA and proclamation was issued against the son of the petitioner. It is further submitted that due to his mental illness during 2020–2022, he also left the house without informing

anyone and for his missing, one F.I.R. was also lodged by his family member in the police station. Further, he was undergoing treatment at LGB Regional Institute of Mental Health, Tezpur, and he could not appear before the Court only due to his mental issues. However, at present, he is at home and he can be produced before the Court of learned Assistant Sessions Judge, Karbi Anglong, Diphu, and accordingly, prayed for setting aside the order of issuance of NBWA and the proclamation by the Court of learned Assistant Sessions Judge, Karbi Anglong, Diphu.

In this context, the learned Additional Public Prosecutor, Mr. P. Borthakur, has submitted that from the annexures of the medical documents, which have been annexed along with the petition, it is seen that the son of the present petitioner is suffering from some mental issues and accordingly, he may be directed to appear before the learned Assistant Sessions Judge, Karbi Anglong, Diphu, with a fresh application for bail.

After hearing the submissions made by the learned counsels for both sides and also perusing the materials available in the case record, it is seen that vide order dated 21.01.2021, the petition filed on behalf of the accused was rejected by the learned Court below as the case was pending for recording of statement of witness since 17.02.2020 and only due to non-appearance of the accused, there was a delay in disposal of the case and hence, the petition was rejected and NBWA was issued against him. However, from the order dated 12.01.2023, it is seen that the NBWA was returned unexecuted with a report that the accused was missing from his home and for which, one F.I.R. was also lodged before the police station.

So, considering all these aspects of the case including the mental health condition of the present accused/petitioner, I hereby direct the petitioner to produce the accused- Akas Saha before the Court of learned Assistant Sessions Judge, Karbi Anglong, Diphu, within 10 (ten) days from the date of passing of this order and to file a petition for regular bail and the learned Court below shall consider the same in accordance with law. And, till then, the execution of the NBWA as well as the proclamation issued against the accused- Akas Saha shall remain suspended.

With the above observation and direction, this criminal petition stands disposed of.

JUDGE

Comparing Assistant