GAHC010064902023

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

Case No. : Crl.Pet./282/2023

LAGA BASUMATARY @ LAOGA BASUMATARY
S/O LATE DAREN BASUMATARY
R/O VILL- KHAIRAJULI
P.S. TAMULPUR
DIST. BAKSA, PIN-781346

VERSUS

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

2:SRI BIDYA MOHAN KUSH
S/O LATE KASTA MOHAN KUSH
R/O VILL- JAMUNA NAGAR

P.S. UMRANGSO

DIST. DIMA HASAO

Advocate for the Petitioner : MR. B BARUAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 27-03-2023

Heard Mr. B. Baruah, learned counsel for the petitioner Laga Basumatary @ Laoga Basumatary.

The petitioner has filed an application under Section 482 Cr.PC with prayer for quashing the orders issuing NBWA and P&A against the petitioner and other consequential orders passed by the Sessions Judge, Dima Hasao, Haflong in Sessions Case No. 8/2012 (corresponding to Umrangso P.S. Case No. 25/2004) under Sections 448/302/34 IPC.

Heard Ms. S.H. Bora, learned Addl. P.P. for the respondent No. 1.

The learned Addl. P.P. has accepted notice on behalf of respondent No. 1 and has also received a copy of the petition.

It is submitted on behalf of the petitioner that charge-sheet was laid against him along with his co-accused being charge-sheet No. 03 of 2005 on 31.03.2005. At that time the judiciary was not separated. When the judiciary was separated the case was transferred to the Court of the District & Sessions Judge, Dima Hasao and the order dated 24.08.2017 marked as Annexure-3 clearly reflects the fact. Summonses were issued to the petitioner to his address at Tamulpur. The order dated 23.12.2022 passed by the learned Sessions Judge, Dima Hasao, Haflong clearly reflects that NBWA and P&A was issued against the petitioner but the same were not executed. The reason being that the address of the petitioner's village was not under the Nalbari police jurisdiction. The petitioner's village was under the Tamulpur PS jurisdiction under the Baksa district. ASI Harideb Das who was present before the Court of the Sessions Judge at Dima Hasao informed the Court regarding the wrong address against which the summonses and NBWA and P&A have been issued so far continuously after charge-sheet was laid against the petitioner. This is the reason why the petitioner was unable to appear before the Court and cooperate with the trial.

It is true that the trial has procrastinated. The learned counsel for the petitioner has submitted that it is not because of the conduct of the petitioner that the trial was

protracted, but it was because of the wrong address against which the processes were issued against the petitioner. The petitioner is apprehending that he would be forwarded to custody as NBWA and P&A have already been issued. I have considered the submissions at the Bar that no reason is recorded in the order dated 16.02.2020 when NBWA and P&A was issued against the petitioner without complying the mandate of Section 82 of the Cr.PC. The petitioner is willing to cooperate with the trial. I have given my anxious consideration to the submissions at the Bar with circumspection.

The NBWA and P&A issued against the petitioner vide the orders impugned by the petitioner is to be kept in abeyance till the appearance of the petitioner. The petitioner is directed to appear before the trial Court on the next dated fixed i.e. 25.04.2023 and cooperate with the trial. The petitioner is at liberty to pray for bail, which will be considered by the Trial Court as per merits of the case.

JUDGE

Comparing Assistant