

GAHC010095502023



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

Case No. : Crl.Pet./413/2023

BHARGAV GIRI @ BABLU
S/O SRI BINOD GIRI
R/O HOUSE NO. 32,
NEAR KANYA MAHAVIDYALAYA PATH
SR. FACULTY HIGH SCHOOL, P.S. GEETANAGAR,
DIST. KAMRUP (METRO), ASSAM

VERSUS

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

2:SRI RAJIB BORAH
S/O SRI DHANIRAM BORA
SUB-INSPECTOR OF POLICE

GEETANAGAR POLICE STATION

P.S. GEETANAGAR

DIST. KAMRUP (METRO)
ASSAM
PIN-78102

Advocate for the Petitioner : MR S H SIKDAR

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR**

ORDER

08.05.2023

Heard Mr. S.H. Sikdar, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Additional Public Prosecutor, Assam appearing for the State respondent.

By this petition under Section 482 Cr.P.C., the petitioner has prayed for setting aside and quashing of the order, dated 26.04.2023, passed by the learned Addl. Sessions Judge No. 2, Kamrup(M), Guwahati in NDPS Case No.124/2021 (arising out of Geetanagar P.S. Case No.219/2021 under Sections 22(c)/29 of the NDPS Act) issuing P & A against the petitioner as well as the earlier orders, dated 27.12.2022, 10.01.2023, 21.01.2023, 04.02.2023, 03.03.2023, 17.03.2023, 13.03.2023 and 12.04.2023, whereby NBWA and P&A were issued against the petitioner.

Mr. S.H. Sikdar, learned counsel for the petitioner, submits that on receipt of summon from the learned trial Court initially the petitioner had been appearing before the learned trial Court from time to time by engaging a counsel. However, Mr. Sikdar submits, due to loss of communication with his engaged counsel, the petitioner failed to appear before the learned trial Court on several dates, for which, on 27.12.2022 NBWA was issued against the petitioner. Subsequently, Mr. Sikdar submits, vide orders, dated 10.01.2023, 21.01.2023, 04.02.2023, 03.03.2023, 17.03.2023, 13.03.2023 and 12.04.2023, NBWA and P&A were issued against the petitioner and thereafter, on 26.04.2023 P & A was issued against the petitioner fixing 24.05.2023 for production and appearance. Mr. Sikdar, learned counsel, submits that the petitioner is an

illiterate person being a daily wage earner and his non-appearance before the learned trial Court was completely unintentional. Therefore, Mr. Sikdar submits that an opportunity may be given to the petitioner to appear before the learned Court below and till his appearance, the execution of the NBWA and P&A issued against him may be directed to be kept in abeyance.

Mr. B. Sarma, learned Additional Public Prosecutor, submits that in the backdrop of facts stated above, the petitioner may be directed to appear before the learned Court below on a specified date, subject to conditions.

Be it mentioned here that within the ambit and scope of the power vested on this Court, under Section 482 Cr.P.C., the NBWA and P &A issued by the learned Court below cannot be recalled. However, having considered the above submissions made by the learned counsel for both sides and consideration of the averments made in the petition supported by the documents annexed thereto, it is provided that the petitioner shall appear before the Court of learned Addl. Sessions Judge No. 2, Kamrup(M), Guwahati **within a period of 10(ten) days from today** and till his appearance, the execution of the NBWA and P &A issued against him shall be kept in abeyance subject to the condition that if he fails to appear before the learned Court below within the specified period of 10 days, on and from the 11th day, this order shall have no force.

With the above direction, the petition stands disposed of.

JUDGE

Comparing Assistant