

GAHC010103752023



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

Case No. : Crl.Pet./456/2023

LATIYAR HUSSAIN
S/O LATE ABDUL RAHIM SK
VILL- WEST BHADRAGAON, P.S. BONGAIGAON, DIST. BONGAIGAON,
ASSAM, PIN-783384

VERSUS

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

2:MANISH GHOSH
S/O MUKUL GHOSH
KOKRAJHAR TOWN
WARD NO. 5 (TENGAPARA)
DIST. KOKRAJHAR (BTR) ASSA

Advocate for the Petitioner : MR. N AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
ORDER

Date : 18.05.2023

Heard Mr. N. Ahmed, learned counsel for the petitioner. Also heard Mr. D.P. Goswami, learned APP appearing for the State.

2. In view of the order proposed to be passed, issuance of notice to the respondent No. 2 is dismissed.

3. This criminal petition has been filed under Section 482 Cr.P.C. for setting aside the NBWA issued on 22.11.2022 and 08.12.2022 and the subsequent NBWA/order issued by the learned Addl. C.J.M., Kokrajhar in connection with CR (NI) No. 5^C/2022 under Section 138 of the N.I. Act.

4. The learned counsel for the petitioner, submits that the petitioner has been facing trial in CR (NI) No. 5^C/2022 under Section 138 of the N.I. Act before the learned Addl. C.J.M., Kokrajhar and after getting summon, the petitioner had been appearing before the learned Court below regularly. However, on 22.11.2022 and other subsequent dates, he could not appear before the learned Court below nor he was able to engage any counsel on his behalf to file a petition due to ill health of his wife. Accordingly, it is submitted that an opportunity may be given to the petitioner for his appearance before the learned Court below and till his appearance, the execution of NBWA issued against him may be directed to be kept in abeyance.

5. From the order sheets, it is seen that despite repeated orders of the learned Trial Court, the petitioner has remained absent on several dates and though certain medical documents are produced, the illness of the petitioner's wife cannot be the ground to not appear and take steps before the learned Court below. From the order dated 24.04.2023 of the learned Trial Court, it is seen that, as per the police report, the petitioner was not found on the address given and his present whereabouts is also not known.

6. In view of the above default of the petitioner in appearing before the learned Trial Court, we find no reason to interfere with the impugned order. Nonetheless, this Court is inclined to grant him sometime to appear before the learned Trial Court and, as such, till 26.05.2023, any NBWA issued in connection

with CR (NI) No. 5^C/2022, pending before the learned Addl. C.J.M., Kokrajhar, shall be kept in abeyance, subject to the condition that the petitioner shall appear before the Court of learned Addl. C.J.M., Kokrajhar on or before 26.05.2023.

7. Further, to ensure timely disposal of the proceeding, it is provided that the petitioner shall not change his residence and he shall appear before the learned Trial Court on each and every date, notwithstanding his/or his wife's physical condition.

8. The conduct of the petitioner shall be monitored by the Court of learned Addl. C.J.M., Kokrajhar for a period of one month from the date of this order and in the event the petitioner is not found violating any condition, it would be open for the Addl. C.J.M., Kokrajhar to recall the NBWA. The learned Trial Court shall also be at liberty to extend the suspension of the NBWA for a period of one month from the date of appearance of the petitioner on or before 26.05.2023 without fail. It is provided that if the petitioner is found co-operating with the trial, the learned Addl. Chief Judicial Magistrate may recall the NBWA.

9. With the aforesaid condition, the execution of the NBWA issued against the petitioner in connection with CR (NI) No. 5^C/2022 is kept suspended till 26.05.2023.

10. This criminal petition stands accordingly disposed off.

JUDGE

Comparing Assistant