

GAHC010209682022



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

Case No. : W.P.(Crl.)/22/2022

SUBHRA JYOTI BHARALI
SON OF BHABANANDA BHARALI
RESIDENT OF LANKESWAR
PASCHIM JALUKBARI
GUWAHATI-781014
ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY
MINISTRY OF HOME AFFAIRS
GOVERNMENT OF INDIA
NORTH BLOCK
NEW DELHI
PIN- 110001.

2:THE DIRECTOR
ENFORCEMENT DIRECTORATE
GOVERNMENT OF INDIA
PRAVARTAN BHAWAN
DR. APJ ABDUL KALAM ROAD
NEW DELHI-110011.

3:THE DEPUTY DIRECTOR
ENFORCEMENT DIRECTORATE
GUWAHATI
GOVERNMENT OF INDIA
HOUSE NO. 20
RAJGARH ROAD
BYE LANE NO. 1
CHANDMARI
GUWAHATI-781003.

4:RAJ KUMAR RAM
ASSISTANT DIRECTOR
ENFORCEMENT DIRECTORATE
GUWAHATI
GOVERNMENT OF INDIA
HOUSE NO. 20
RAJGARH ROAD
BYE LANE NO. 1
CHANDMARI
GUWAHATI-781003.

5:NAVEEN GUPTA
ASSISTANT DIRECTOR
ENFORCEMENT DIRECTORATE
GUWAHATI
GOVERNMENT OF INDIA
HOUSE NO. 20
RAJGARH ROAD
BYE LANE NO. 1
CHANDMARI
GUWAHATI-781003.

6:DIBYENDU MAN
ASSISTANT DIRECTOR
ENFORCEMENT DIRECTORATE
GUWAHATI
GOVERNMENT OF INDIA
HOUSE NO. 20
RAJGARH ROAD
BYE LANE NO. 1
CHANDMARI
GUWAHATI-781003.

Advocate for : MR. D DAS SR. ADV
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 5 ORS

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

Date : 16.02.2023

Heard Mr. S Das, learned counsel for the petitioner. Also heard Mr. R K D Choudhury, learned Dy.S.G.I. for the respondent no. 1 being the authorities under the Union of India and Mr. R Dhar, learned Additional Senior Government Advocate for the respondents no. 2 to 6 being the authorities under the Enforcement Directorate.

2. W.P.(Crl.) No. 22/2022 has been instituted assailing the search and seizure procedure that was adopted against the petitioner on 31.05.2022 which according to the petitioner was without following the due process of law as provided under the *Prevention of Money Laundering Act, 2002* and the *Prevention of Money-Laundering (Forms, Search and Seizure or Freezing and the Manner of Forwarding the Reasons and Material to the Adjudicating Authority, Impounding and Custody of Records and the Period of Retention) Rules, 2005*.

3. Without expressing any view on the merit of the issues being raised by the petitioner it is taken note that in the meantime an appropriate application under Section 44 of the Prevention of Money Laundering Act, 2002 had been filed by the Directorate of Enforcement, Government of India, Guwahati Zonal Office in the learned Court of the Special Judge, Guwahati. It is also stated that subsequent to the proceeding under Section 44 being initiated, the next stage against the accused petitioner in the said proceeding would be for consideration of charges.

4. As the appropriate Criminal Court having jurisdiction over the matter had already assumed jurisdiction, we are of the view that any decision rendered by this Court in the writ proceeding may amount to an interdiction in the criminal proceeding of which jurisdiction had already been assumed by the learned Special Judge, Guwahati over the matter.

5. Mr. S Das, learned counsel for the petitioner by referring to Section 227 of the Cr.P.C. has raised an issue that at the stage of framing of charges before the criminal proceeding the petitioner can only rely upon the material and documents that had been submitted by the investigation/prosecution before the Criminal Court but on the other hand the petitioner also desires to rely upon some further documents in the present writ proceeding, which according to them may be impermissible to be relied upon in the criminal proceeding before the learned Special Judge in view of the provisions of Section 227 of the Cr.P.C.

6. We have been pointed out that the relevant document that the petitioner intends to rely upon is an affidavit filed by Nabanita Pathak wife of the petitioner herein and the affidavit contains certain factual assertions that the deponent therein intended to make. The affidavit upon being sworn may be in the form of a document but the contents thereof definitely are matters which the petitioner as an accused can take before the Criminal Court inasmuch as

Section 227 of Cr.P.C. also provides that while considering the charges the submission of accused and the prosecution be heard and taken into consideration.

7. As the affidavit relied upon may not be per-se be a document which the petitioner would seek to rely upon in his presentation before the Criminal Court and the relevance of it would be the contents thereof, we are of the view that the petitioner can raise all such contention stated in the affidavit when he appears before the Criminal Court for his defence. As Section 227 of Cr.P.C. is wide enough to provide all such protection to the accused person by means of an opportunity of hearing at the stage of consideration of charges, we are of the view that all such issues that have been raised in this writ petition can also be raised by the petitioner accused in the proceeding before the learned Special Judge, Guwahati.

8. We are of the view that as the further continuation of this writ proceeding may result in an interdiction by the Writ Court in the criminal proceeding, the jurisdiction of which had already been assumed by the learned Special Judge, Guwahati, further continuation of the writ proceeding would not be desirable in the facts and circumstance and also as per law.

9. Accordingly, this writ petition stands closed but however, the petitioner is given all the liberty to take any stand that he may desire to take in the criminal proceeding as well as to approach again, if so advised or otherwise admissible in law.

Writ petition stands disposed of in the above terms.

JUDGE

Comparing Assistant