

GAHC010117872023



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

Case No. : Crl.Pet./532/2023

USMAN ALI @ USMAN GONI AND 4 ORS
S/O LATE HURMUJ ALI
R/O VILL- UDHANTALA,
P.O. DHING P.S. DHING,
DIST. NAGAON, ASSAM,
PIN-782122

2: SADIQUL ISLAM
S/O LATE HURMUJ ALI
R/O VILL- UDHANTALA

P.O. DHING P.S. DHING

DIST. NAGAON
ASSAM

PIN-782122

3: RIBBUL ALOM @ RIBUL ISLAM
S/O JAMIR UDDIN
R/O VILL- UDHANTALA

P.O. DHING P.S. DHING

DIST. NAGAON
ASSAM

PIN-782122

4: JAMIR UDDIN
S/O LATE MUNSUR ALI
R/O VILL- UDHANTALA

P.O. DHING P.S. DHING

DIST. NAGAON
ASSAM

PIN-782122

5: JOHIRUL ISLAM
S/O HABIJ UDDIN
R/O VILL- UDHANTALA

P.O. DHING P.S. DHING

DIST. NAGAON
ASSAM

PIN-78212

VERSUS

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

2:MD. SADDAM HUSSAIN
S/O ABUL KASHEM
R/O VILL- UDHANTALA
P.O. DHING
P.S. DHING

DIST. NAGAON
ASSAM
PIN-78212

Advocate for the Petitioner : G UDDIN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 06.06.2023

Heard Mr. G. Uddin, learned counsel appears for the

petitioner. Also heard Ms. S. H. Borah, learned Additional Public Prosecutor appearing for the State of Assam.

2. This criminal petition has been filed by the petitioners, namely, 1. Usman Ali @ Usman Goni, Sadiqul Islam, 3. Ribbul Alom @ Ribul Islam, 4. Jamir Uddin and 5. Johirul Islam, aggrieved by the issuance of NBWA by the Court of Sub-Divisional Judicial Magistrate (S), Nagaon vide order dated 29.03.2022 in PRC Case No. 1150/2022.

3. It is submitted by the learned counsel for the petitioners that the petitioners were shown as absconder in the charge-sheet which is filed but they were always available in their respective residences and they were never called by the police during the course of investigation. As such they were unaware that the charge-sheet has been filed.

4. It is further submitted that the Court of Sub-Divisional Judicial Magistrate (S), Nagaon had issued NBWA on the first date itself which is contrary to the procedure laid down under Cr.P.C.

5. Ms. S. H. Borah, learned Additional Public Prosecutor appears for the State of Assam submits that the next date fixed in the matter is shown to be fixed on 10.06.2023 as per the last order dated 03.04.2023 passed by the Court of Sub-Divisional Judicial Magistrate (S), Nagaon. Therefore, the petitioners are directed to appear before the competent Court.

6. Having heard the learned counsels for the parties and perusal of the records, this Court is of the view that ends of justice will suffice if the petition is disposed of directing the petitioners to appear before the Court of Sub-Divisional Judicial Magistrate (S), Nagaon in connection with PRC Case No. 1150/2022 on the next date fixed i.e. on 10.06.2023. If the petitioners appear before the Court of Sub-Divisional Judicial Magistrate (S), Nagaon in pursuance to this Court's order, the NBWA issued by the Court of Sub-Divisional Judicial Magistrate (S), Nagaon against the petitioners be recalled. The petitioners will, thereafter, file regular bail application which will be considered by the competent Court on its own merit.

7. This Court is of the view that in the face of law laid down by the Apex Court in ***Siddharth Vs State of Uttar Pradesh and Anr***, reported in ***(2022) 1 SCC 676*** and Judgment dated 20.03.2023 rendered in ***Mahdoo Bava Vs Ventral Bureau of Investigation*** in Criminal Appeal No.....of 2023 (Arising out of SLP (Crl) No. 376 of 2023), it is no longer *res integra* that appearance of the accused persons pursuant to summons being issued do not necessarily in all cases require orders directing the accused to be taken into custody as a matter of course. When the law has already been laid down by the Apex Court, no further orders are necessary to be passed by this Court.

8. In view of the law laid down by the Apex Court, this criminal

petition is closed directing the petitioners to appear before the Competent Court on 10.06.2023 in connection with PRC Case No. 1150/2022, before the Court of Sub-Divisional Judicial Magistrate (S), Nagaon.

9. Upon their appearance, the petitioners are at liberty to make necessary prayers before the Competent Court and the Competent Court upon consideration of the matter on its merits and taking into consideration the law laid down by the Apex Court will pass appropriate order. And till such application is disposed of by the Sub-Divisional Judicial Magistrate (S), Nagaon, the NBWA issued against the petitioners shall remain stayed.

10. This criminal petition is accordingly disposed of in terms of the above.

JUDGE

Comparing Assistant