

GAHC010121532023



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

Case No. : Crl.Pet./536/2023

AHMED ALI
S/O ABDUL MOZID SK.
R/O VILL- CHAR MAGURMARI, P.S. PHULBARI, DIST. WEST GARO HILLS,
MEGHALAYA, PIN-794104

VERSUS

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

2:MD. SAMSUL KHAN
S/O LATE AZAHAR ALI KHAN
R/O VILL- CHAR MAGURMARI
P.S. SUKCHAR DIST. SOUTH SALMARA MANKACHAR
ASSAM
PIN-78312

Advocate for the Petitioner : MD I H LASKAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 06.06.2023

Heard Mr. I. H. Laskar, 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 petitioner, namely, Ahmed Ali, setting aside of the order dated 19.05.2022 passed by the Additional Chief Judicial Magistrate, South Salmara, Mankachar in GR Case No. 644/2011 arising out of Sukchar Police Station Case No. 133/2011 registered under Section 120(B)/366(A)/376 of IPC whereby Warrant of Arrest was issued against the petitioner and thereafter all subsequent orders by which Warrant of Arrest have been issued against the petitioner.

3. It is submitted by the learned counsel for the petitioner that there was a dispute between the petitioner and the respondent No.2 which was amicably settled. It is submitted by the learned counsel for the petitioner that the dispute which led to the filing of the FIR dated 17.12.2011 by the informant was the outcome of some misunderstanding and subsequently the matter was amicably settled and a declaration to that effect was made before the Notary dated 09.07.2014 and a copy thereof was also submitted before the I/O of Sukchar Police Station in Sukchar Police Station Case No. 133/2011.

4. Learned counsel for the petitioner submits that he was under the impression that the matter was amicably settled until he came to know that in his absence the police had gone to his residence in search of him in connection with the said

Sukchar Police Station Case No. 133/2011. He subsequently came to learn that the charge-sheet has been filed in the matter by the Investigating Officer and the matter is presently pending before the Additional Chief Judicial Magistrate, South Salmara, Mankachar. It is submitted that the learned Court had issued Warrant of Arrest against the petitioner on 19.05.2022 and thereafter by several other orders. The learned counsel for the petitioner submits that he is willing to contest the case and he was always available as the deed of settlement was submitted before the Investigating Officer and he was under the impression that the dispute has agreed to by the informant had been settled out of Court and no further issue was alive.

5. Under such circumstances, the Investigating Officer ought not to have filed the charge-sheet before the Court as had been done.

6. Learned counsel for the petitioner submits that he is willing to appear before the Court and contest the matter and therefore submits that the Warrant of Arrest be stayed enabling him to appear before the Court.

7. Ms. S. H. Borah, learned Additional Public Prosecutor appears for the State of Assam submits that the petitioner should be directed to appear before the Court in pursuance to the orders passed by the Court of Additional Chief Judicial Magistrate, South Salmara, Mankachar and 19.06.2023 is shown to be fixed as a next date for appearance.

8. 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 petitioner to appear before the Court of Additional Chief Judicial Magistrate, South Salmara, Mankachar in connection with GR Case No. 644/2011 arising out of Sukchar Police Station Case No. 133/2011 on the next date fixed i.e. on 19.06.2023. If the petitioner appears before the Court of Additional Chief Judicial Magistrate, South Salmara, Mankachar in pursuance to this Court's order, the Warrant of Arrest issued by the Court of Additional Chief Judicial Magistrate, South Salmara, Mankachar against the petitioner will be recalled. The petitioner will, thereafter, file regular bail application which will be considered by the competent Court on its own merit.

9. 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.

10. In view of the law laid down by the Apex Court, this criminal petition is closed directing the petitioner to appear before the Competent Court on 19.06.2023 in connection with GR Case No. 644/2011 arising out of Sukchar Police Station Case No. 133/2011, before the Court of Additional Chief Judicial Magistrate, South Salmara, Mankachar.

11. Upon his appearance, the petitioner is 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 19.06.2023 the Warrant of Arrest issued by the Court of Additional Chief Judicial Magistrate, South Salmara, Mankachar against the petitioner in GR Case No. 644/2011 arising out of Sukchar Police Station Case No. 133/2011, shall remain stayed.

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

JUDGE

Comparing Assistant