

GAHC010194062023



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

Case No. : Crl.Pet./932/2023

BIRAJ KUMAR DUTTA
S/O GANGADHAR DUTTA,
R/O BIR CHILARAI PATH, GOALPARA, ASSAM AND PRESENTLY RESIDING
AT HENGRABARI, OPP. DEPUTY COMMISSIONER OFFICER, GUWAHATI-
781036, P.O. AND P.S.- DISPUR, IN THE DISTRICT OF KAMRUP (METRO),
ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY THE P.P., ASSAM.

Advocate for the Petitioner : MR. B PHUKAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 18.09.2023

Heard Mr. Mr. B. Phukan, learned counsel for the petitioner. Also heard Mr. B. Sharma, learned Additional Public Prosecutor for the State respondent.

This is a criminal petition under Section 482 *read with* Sections 397/401 of the Code of Criminal Procedure praying for setting aside and quashing the impugned order dated 14.03.2023 and all subsequent orders, including the order dated 11.08.2023 as well as the order dated 29.08.2023, passed by the learned Chief Judicial Magistrate, Cachar, Silchar, in G.R. Case No. 134 of 1997.

It is submitted by the learned counsel for the petitioner, Mr. Phukan, that the accused/petitioner was on representation by his engaged counsel and on 09.02.2023 also, he was duly represented by his engaged counsel. However, considering his absence, one notice was issued to his bailor asking him to appear on 14.03.2023. But, on that day, the accused remain absent as he was not informed by his engaged counsel nor by his bailor and considering his absence, the NBWA was issued on 14.03.2023 and also on subsequent dates. It is further submitted that the accused was not aware about the fact that the counsel, who was representing him, remained absent and was also not aware that the notice was also issued to his bailor. However, the accused/petitioner is ready and willing to appear before the Court and at this stage, already 10 (ten) numbers of witnesses have been examined and the case is at the verge of completion of trial. Accordingly, it is prayed for recalling the NBWA issued against the accused/petitioner by setting aside and quashing the orders, mentioned above.

In this context, the learned Additional Public Prosecutor raised no objection and submitted that the accused/petitioner may be given a chance to appear before the learned Court below as the case is pending at the stage of

evidence.

After hearing the submissions made by learned counsels for both sides and also considering the orders annexed along with the petition, it is seen that the accused/petitioner was on representation by his engaged counsel, who was present before the Court till 09.02.2023. However, considering his long absence without taking any steps on several occasion, the notice was issued to the bailor along with NBWA to the present accused/petitioner vide order dated 14.03.2023.

So, considering all above aspects of the case and also considering the materials available on record, I hereby direct the petitioner to appear before the Court of learned Chief Judicial Magistrate, Cachar, Silchar, within 10 (ten) days from the date of passing of this order and to file a petition for regular bail and upon filing of such petition, the learned Court below shall consider the same in accordance with law. And, till then, the execution of the NBWA issued against the present accused/petitioner- Shri Biraj Kumar Dutta, in connection with G.R. Case No. 134 of 1997, shall remain suspended.

With the above observation and direction, this criminal petition stands disposed of.

JUDGE

Comparing Assistant