

GAHC010205902023



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

Case No. : Crl.Pet./970/2023

MADHAB KR. DAS
S/O LATE PARSHU RAM DAS
HOUSE NO. 1, JURIPATH, NARIKAL BASTI, DIST. KAMRUP (METRO),
ASSAM, PIN-781024

VERSUS

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

2:SRI PRATYUT PRATIM GOGOI
S/O SRI SATYENDRA NATH GOGOI
R/O JAYANAGAR
P.O. MORANHAT
P.S. MORAN

DIST. DIBRUGARH
ASSAM

PIN-78567

Advocate for the Petitioner : MR. R SARMA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 14.09.2023

Heard Mr. R. Sarma, learned Counsel for the petitioner. Also heard Mr. B. Sarma, learned Addl. P.P. appearing for the respondent.

This application has been filed under Section 482 of the Cr.P.C. against the order dated 05.09.2023 passed in Case No. 26^c/2021 issued by the learned JMFC, Dibrugarh whereby the NBWA has been issued against the present petitioner considering his absence on 05.09.2023.

It is submitted by the learned counsel for the petitioner that one transfer petition was filed before this Court which is registered as transfer petitioner (CrI.) No. 24/2022 and vide order dated 11.08.2022 the further proceeding of the said case No. 26^c/2021 under Section 138 of the Negotiable Instrument Act, 1881 was stayed till the returnable date. The order was communicated to the learned trial Court through speed post but considering the absence of the present petitioner the warrant was issued against him vide order dated 05.09.2023. Accordingly it is prayed that the order of the Court below dated 05.09.2023 be stayed and the petitioner is ready to appear before the learned Court along with the certified copy of the order of stay passed in transfer petition (Criminal) No. 24/2022.

The learned Additional Public Prosecutor Mr. B. Sarma raised no objection to the submission of the learned counsel for the petitioner and submitted that he may be directed to appear before the learned Court below.

After hearing the submissions made by the learned counsel appearing for both the sides and also considering the order passed by the learned Court below it is seen that the accused petitioner remained absent before the Court below on 2 consecutive dates and considering absence of the petitioner the order for issuance of NBWA was passed by the learned Court below. However, it is seen that the stay order was received by the learned Court below and considering this the accused petitioner was asked to furnish recent order if any order passed by this Court and accordingly date was fixed. Thus, it is seen that the learned Court below while issuing the NBWA the accused petitioner considered the absence of the petition without any step. However, it can not be denied that the proceeding was stayed by this Court vide order dated 11.08.2022 in Tr.P.(CrI.) till the returnable date. Hence, considering entire aspect of the case, I find that the petitioner should be given one more chance to produce the certified copy of

the order of stay before the learned Court below along with the petition and considering entire aspect of the matter the NBWA issued against the petitioner dated 05.09.2023 shall be recalled. The warrant be recalled if already issued.

Accordingly, the order dated 05.09.2023 issuing NBWA is set aside and quashed.

With the above observations, the criminal petition is allowed.

JUDGE

Comparing Assistant