

GAHC010224532022



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

Case No. : Crl.Pet./1113/2022

BAKKAR ALI
S/O ASATULLA SK.
R/O BINNACHARA PART-III UNDER GOLAKGANJ POLICE STATION,
IN THE DISTRICT OF DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE LEARNED PP, ASSAM

Advocate for the Petitioner : MR SARFRAZ NAWAZ

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

25.05.2023

Heard Mr. H.R.A. Choudhury, learned Senior counsel for the petitioner and Mr. B.B. Gogoi, learned Addl. PP for the State.

2. This Criminal Petition has been filed by the petitioner aggrieved by the orders passed by the Court of Chief Judicial Magistrate, Dhubri in PRC Case No.

58/2022 vide orders dated 11.03.2022, 12.04.2022 and 06.05.2022.

3. The learned Senior Counsel for the petitioner submits that the petitioner was shown as an absconder in the charge-sheet which was filed by the Investigating Officer in connection with Golokganj P.S. Case No.1262/2021. The learned Senior counsel for the petitioner submits that the Court of Chief Judicial Magistrate, Dhubri issued Proclamation and Attachment as well as NBWA for securing the presence of the petitioner. The learned Senior Counsel for the petitioner submits that the petitioner was never an absconder and he was always available, however, for reasons beyond this comprehension, he was shown to be an absconder in the charge-sheet filed. That apart, the impugned orders which were passed by the learned Court of Chief Judicial Magistrate, Dhubri directing issuance of Proclamation and Attachment is contrary to the provisions of Cr.P.C. as laid down under Sections 82 and 83. Being aggrieved, the present criminal petition has been filed praying for quashing of the impugned orders passed by the Court of Chief Judicial Magistrate, Dhubri in PRC Case No. 58/2022 issuing P& A and NBWA against the petitioner.

4. Mr. B.B. Gogoi, learned Addl. PP submits that the petitioner should go and appear before the Court and contest the matter.

5. Having heard the learned counsels for the parties and upon due perusal of the pleadings on record, it is seen that essentially the Court of Chief Judicial Magistrate, Dhubri had passed these orders to secure the presence of the petitioner who was shown to be an absconder in the charge-sheet filed. In the meantime, the matter has been committed to the Court of Sessions Judge in so far as the other two accused persons are concerned vide order dated 06.05.2022.

- 6.** This Court is of the view that the submissions of the learned Senior Counsel in respect of the issuance of P&A by the Court of CJM, Dhubri being contrary to the provisions of Section 82 and 83 can be urged before the said Court upon filing proper application, if so advised.
- 7.** This Court upon consideration of the entire matter feels that this petition can be disposed of with a direction to the petitioner to appear before the competent Court, namely, Court of Chief Judicial Magistrate, Dhubri, and file necessary application seeking recall of the orders passed by the Court.
- 8.** Accordingly, the petitioner is directed to appear before the Court of CJM, Dhubri within a period of 15 days from today. If the petitioner appears before the Court of Chief Judicial Magistrate, Dhubri as directed by this Court within a period of 15 days from today, the NBWA issued against the petitioner in PRC Case No. 58/2022 shall be recalled. Till the time, the petitioner appears before the Court of Chief Judicial Magistrate, Dhubri and up to a maximum period of 15 days from today, the NBWA issued shall remain stayed.
- 9.** Petitioner will be at liberty to file necessary application for recall of other orders passed regarding issuance of P&A as well as for bail.
- 10.** The Criminal petition is, accordingly, disposed of in terms of the above direction.

JUDGE

Comparing Assistant