

GAHC010226782023



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

Case No. : Crl.Pet./1093/2023

SANCHIT KUMAR
S/O- KRISHAN KUMAR,
PRESENT R/O- LUIT ENCLAVE , KHARGHULI,
P.S- LATASHIL, GUWAHATI-04, DIST- KAMRUP (M), ASSAM

VERSUS

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

2:GEETIKA KUMAR
W/O- SANCHIT KUMAR
R/O- SURYYA APARTMENT H.NO-31
FLATNO-403
S.K BHUYAN ROAD
DIGHALI PUKHURI
P.S- LATASHIL, GUWAHATI-01
KAMRUP (M), ASSA

Advocate for the Petitioner : MR. JYOTIRMOY ROY

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

10.10.2023

Heard Mr. J. Roy, learned Senior counsel assisted by Mr. B.P. Sarmah, learned

counsel for the petitioner and also heard Mr. P. Borthakur, learned Additional Public Prosecutor, Assam, appearing for the State respondent No.1.

2. In this petition, under Section 482 read with Section 397 of the Code of Criminal Procedure, 1973, the petitioner, namely, Sanchit Kumar, has put to challenge the correctness or otherwise of the order, dated 05.09.2023, passed by the learned Principal Judge, Family Court No.3, Kamrup(M), Guwahati, in F.C.(Crl.) Case No.409/2019. It is to be noted here that vide impugned order dated 05.09.2023, the learned Court below has dismissed the Petition No.846/2023 filed by the petitioner for adjournment of the case by holding that the grounds so assigned by the petitioner for adjournment is not at all satisfactory as last chance was given to the petitioner to adduce evidence in support of his case, and thereafter, decided to proceed with the case without DWs and fixed the case on 11.10.2023 for argument.

3. Mr. Roy, learned Senior counsel for the petitioner, submits that it is a fact that the petitioner could not produce the witnesses on different dates on account of some inconvenience which was beyond his control and that on 05.09.2023, the petitioner remained present in the Court, but, his counsel could not appear on account of unavoidable personal engagement of the engaged counsel, who has left for his hometown for which adjournment was sought for. But, the learned Court below, without considering the same, has fixed the case for argument and decided to proceed without the DWs. Mr. Roy further submits that as the petitioner was not allowed to adduce evidence in support of his case, serious prejudice is caused to him. Mr. Roy also submits that the case is fixed tomorrow i.e. 11.10.2023, and the petitioner may be granted only one chance to adduce his evidence and thereafter, the learned Court below may proceed to hear the argument of the parties.

4. Mr. P. Borthakur, learned Additional Public Prosecutor, Assam, submits that apparently, the impugned order, dated 05.09.2023, suffers from no infirmity or illegality requiring any interference of this Court. However, Mr. Borthakur submits that a last opportunity may be given to the petitioner to adduce evidence in support of his case.

5. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the impugned order, dated 05.09.2023, and also the Petition No.846/2023.

6. It appears that on the date fixed, the petitioner remained present in the Court. But, his counsel could not appear, as he left for his hometown due to some unavoidable personal engagement for which Petition No.846/2023 was filed for adjournment. Further, it appears that the learned Court below has dismissed the petition on the ground that last chance was given to the petitioner to adduce his evidence in defence and on earlier occasion also several opportunities were provided to the petitioner. It is to be noted here that fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardized. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial.

7. Considering above, and in the interest of justice, this Court deems it appropriate to afford one last chance to the petitioner to adduce evidence in support of his case. Accordingly, it is provided that the learned Court below shall provide one last opportunity to the petitioner to adduce evidence in support of his case and thereafter, proceed to hear the argument.

8. In terms of above, this criminal petition stands disposed of at this motion stage itself.

Sd/- Robin Phukan
JUDGE

Comparing Assistant