

GAHC010282752023



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

Case No. : Crl.Pet./1346/2023

INTEZAR HOQUE
S/O MD. NAZIM ALI
VILL- BADAIKATA, P.S. TAMULPUR
DIST. BAKSA, ASSAM
PIN-781365

VERSUS

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

Advocate for the Petitioner : MR. H R KHAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 15-12-2023

Heard Mr. HR Khan, learned counsel for the petitioner as well as Mr. RR Kaushik, learned APP for the State.

2. By this criminal petition under section 482/397/401 Cr.P.C., the

petitioner has prayed for quashing/recalling of the warrant of arrest issued against the petitioner by the learned Chief Judicial Magistrate, Kamrup (M), Guwahati in GR case no.5584/2013 under section 384 IPC read with section 17/18 of the Unlawful Activities (Prevention) Act.

3. It transpires from this application that on 30.12.2015, charge-sheet was submitted against the petitioner and other co-accused in connection with the aforementioned case. It is projected that during the pendency of the trial the petitioner had filed an application under section 227/239 Cr.P.C. on 01.03.2019, praying for discharging the petitioner from the said case. It is projected that the said petition has not been disposed of.

4. The learned counsel for the petitioner has submitted that in the meanwhile the physical condition of the mother of the petitioner had deteriorated and she died on 11.02.2022 and his learned counsel had suffered a brain stroke on 21.08.2022 and therefore he was without any communication with his learned counsel and could not take steps in the case. He has now come to know that a notice was issued for proclamation and arrest of the petitioner which was hanged in the concerned police station and in conspicuous places. The learned Chief Judicial Magistrate, Kamrup (M), Guwahati on satisfaction had held that as the service of the proclamation of the accused persons had returned unexecuted and hence declared him to be an absconder. As the learned Court found that there was no immediate prospect of securing the attendance of the petitioner, the case was filed by the same order dated 10.06.2023, by further issuing standing warrant of arrest against the accused persons non returnable till execution.

5. The learned counsel for the petitioner has also invoked the rights guaranteed under the Article 21 of the Constitution of India.

6. The learned APP has made his submissions opposing the prayer made in this application.

7. In this application, the petitioner has not disclosed the last date on which he had physically appeared before the learned Court below. Therefore, the date of commencement of default in appearance before the Court is not known. The petitioner has also not disclosed the date on which the learned Court below had first issued the warrant of arrest for non-appearance of the petitioner before the learned trial Court. Therefore, the materials on which this Court could have formed any opinion is not available.

8. As the Court finds that the learned Chief Judicial Magistrate, Kamrup (M), Guwahati has arrived at a satisfaction that the petitioner has the intention of avoiding arrest and the warrant of arrest and proclamation could not be served and thereafter, the Court arrived at a satisfaction that the proclamation was duly made by hanging the proclamation at conspicuous place as well as in the police station notice board, had filed the proceedings.

9. Therefore, without the period of default disclosed in this application, this Court is of the considered opinion that the prayer made in this application for quashing of the impugned order dated 10.06.2023 has not been made out. The Court does not find any legal infirmity in the order dated 10.06.2023 which

is impugned in this application.

10. In so far as the prayer made by the learned counsel for the petitioner that he is ready and willing to appear before the learned trial Court is concerned, although the Court is disinclined to grant any bail to the petitioner, but it is observed that in the event the petitioner appears before the Court of learned Chief Judicial Magistrate, Kamrup (M), Guwahati and makes an appropriate application as he may be so advised, such an application shall be considered by the said learned Court in accordance with law.

11. This application stands dismissed with observations as indicated above.

12. The Registry shall transmit a copy of this order before the learned Chief Judicial Magistrate, Kamrup (M), Guwahati to make it a part of the record of the proceedings of GR case no.5584/2013.

JUDGE

Comparing Assistant