

GAHC020006252023



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

Case No. : Crl. Pet./34/2023

SRI AJAY BAHADUR SINGH
S/O LATE SUBH NARAYAN SINGH. PROPRIETOR OF SANITARY HARDWARE
STORE, DR. R.O. ROAD , GANESHGURI, DISPUR, GUWAHATI-6, ASSAM

VERSUS

THE STATE OF NAGALAND AND ANR
KOHIMA NAGALAND

2:IMTITEMSU IMSON
S/O AOCHUBA IMSONG,
R/O 158 LAND 14B, WARD 16
NEAR LIVINGSTONE FOUNDATION SCHOOL,
KEVIJAU COLONY, SIGNAL BASTI,
P.S. SUB-URBAN POLICE STATION,
DIMAPUR NAGALAND

Advocate for the Petitioner : I H SAIKIA

Advocate for the Respondent : P.P, NAGALAND

**BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 17-11-2023

Heard Mr. I.H. Saikia, learned counsel for the petitioner and Mr. N. Angami,
learned Public Prosecutor, Nagaland for the State respondents.

2. The petitioner has preferred the instant criminal petition assailing [i] Order dated 17.07.2023 [Anenxure-3]; [ii] Order dated 01.08.2023 [Annexure-4]; and [iii] Order dated 09.09.2023 [Annexure-5], whereby the Court of learned Chief Judicial Magistrate, Dimapur has issued Non-Bailable Warrants of Arrest [NBWA] against the petitioner in connection with Sub-Urban Dimapur Police Station Case no. 43/2023 [corresponding G.R. Case no 471/2023], registered for offences under Sections 420/406, Indian Penal Code [IPC]. The crime case, Sub-Urban Dimapur Police Station Case no. 43/2023 came to be registered on the basis of a complaint lodged by one Imtitemsu Imsong. In the said complaint, the complainant had *inter alia* alleged that the complainant and the petitioner had prior business relationship and in the course of business transactions, an amount of ₹ 11,16,000/- was allegedly misappropriated by the petitioner. On receipt of the said complaint by the Officer In-Charge, Sub-Urban Dimapur Police Station, the crime case was registered on 17.07.2023.

3. Apprehending arrest in connection with Sub-Urban Police Station Case no. 43/2023, the petitioner had earlier approached this Court by preferring a pre-arrest bail application, A.B. no. 29/2023 with the prayer to extend the privilege of pre-arrest bail under Section 438, Code of Criminal Procedure, 1973. After hearing the learned counsel for the parties, the Court, by an Order dated 24.08.2023, extended the benefit of pre-arrest bail to the petitioner with the condition that the petitioner shall appear before the Investigating Officer of Sub-Urban Dimapur Police Station Case no. 43/2023 within a period of 10 [ten] days from 24.08.2023 and shall cooperate with the investigation. The Order dated 24.08.2023 had further observed that in the event of arrest of the petitioner in connection with Sub-Urban Dimapur Police Station Case no. 43/2023, the petitioner shall be released on bail of ₹ 40,000/- with one surety of like amount to the satisfaction of the arresting authority and if the petitioner would fail to appear as directed, the privilege of pre-arrest bail granted to the petitioner shall automatically stand cancelled.

4. It transpires that the Order dated 09.09.2023 [Annexure-5] has been passed on the basis of an application submitted by the Investigating Officer before the Court stating *inter alia* to the effect that the petitioner did not comply with the condition made in the Order dated 24.08.2023 of this Court by not appearing

before the Investigating Officer within a period of 10 [ten] days from 24.08.2023. The earlier two Orders, that is, Order dated 17.07.2023 [Annexure-3] and Order dated 01.08.2023 [Annexure-4], were passed by the Court of learned Chief Judicial Magistrate, Dimapur on the basis of applications submitted by the Investigating Officer of the case before the said Court stating that despite proceeding to the place of residence/business of the petitioner, he could not find the petitioner, who is an accused in the crime case.

5. Mr. Saikia, learned counsel for the petitioner by placing a copy of an Order dated 16.11.2023 passed in I.A.[CrI.] no. 20/2023, arising out of A.B. no. 29/2023, has submitted that the petitioner has been directed to appear before the Investigating Officer of Sub-Urban Dimapur Police Station Case no. 43/2023 within a period of 15 [fifteen] days from 16.11.2023. He has submitted that as the benefit of pre-arrest bail is in operation for a further period of 15 [fifteen] days from 16.11.2023, the NBWAs issued by the Court of learned Chief Judicial Magistrate, Dimapur by the afore-mentioned 3 [three] Orders, dated 17.07.2023, dated 01.08.2023 & dated 09.09.2023, may be set aside or be kept in abeyance. It is further submitted by him that after complying to the condition made in the Order dated 16.11.2023 passed in I.A.[CrI.] no. 20/2023, the petitioner would appear before the Court of learned Chief Judicial Magistrate, Dimapur to make a prayer for recalling those 3 [three] Orders whereby NBWAs have been issued. He has, thus, submitted in the alternative that the NBWAs issued by the Court of learned Chief Judicial Magistrate, Dimapur be suspended for a reasonable period of time, till final consideration of the instant criminal petition.

6. Mr. Angami, learned Public Prosecutor, Nagaland has fairly submitted that in view of the Order dated 16.11.2023 passed in I.A.[CrI.] no. 20/2023, the foundation of the Order dated 09.09.2023 passed by the Court of learned Chief Judicial Magistrate, Dimapur appears to have been removed.

7. I have duly considered the submissions of the learned counsel for the parties, and have also gone through the materials brought available on record.

8. Initially, the petitioner was extended the privilege for a period of 10 [ten]

days by Order dated 24.08.2023 passed in A.B. no. 29/2023. In view of such extension of the benefit of pre-arrest bail on 24.08.2023, it *prima facie* appears that the basis of issuance of NBWAs by the Orders, dated 17.07.2023 & dated 01.08.2023, by the learned Chief Judicial Magistrate, Dimapur had become redundant. With the extension of the benefit of pre-arrest bail for a further period of 15 [fifteen] days from 16.11.2023 by the Order dated 16.11.2023 passed in I.A. [Cr.] 20/2023, it *prima facie* appears that the issuance of NBWA by Order dated 09.09.2023 has to be considered to be impliedly kept in abeyance. Be that as it may, as the petitioner has undertaken to comply with the condition made in the Order dated 16.11.2023, passed in I.A.[Cr.] no. 20/2023, by appearing before the Investigating Officer of the case and thereafter, by appearing before the Court of learned Chief Judicial Magistrate, Dimapur in order to file application seeking recall of the NBWAs, this Court is of the considered view that instead of keeping this criminal petition, the interest will be better subserved if the NBWAs issued vide Order dated 17.07.2023, Order dated 01.08.2023 & Order dated 09.09.2023 are kept in abeyance for a period of 6 [six] weeks from today. It is ordered accordingly. As a corollary, the NBWAs issued vide those orders are also kept in abeyance for the said period of 6 [six] weeks.

9. The petitioner shall appear before the Court of learned Chief Judicial Magistrate, Dimapur within the said period of 6 [six] weeks from today. It is observed that in the event the petitioner makes any application seeking recall of the NBWAs, the Court of learned Chief Judicial Magistrate, Dimapur shall consider the same expeditiously on its own merits and in accordance with law.

10. This order disposes of the criminal petition.

Sd/-

JUDGE

Comparing Assistant