

GAHC010027942024



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

Case No. : Crl.Pet./145/2024

MOJAHIDUR RAHMAN AND ANR
S/O GANIRUDDIN AHMED
R/O VILL- ATHKURIA
P.S. SIPAJHAR
P.O. PATHARIGHAT
DIST. DARRANG, ASSAM

2: GANIRUDDIN AHMED
S/O LATE DOLOI SEIKH
R/O VILL- ATHKURIA
P.S. SIPAJHAR
P.O. PATHARIGHAT
DIST. DARRANG
ASSA

VERSUS

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

2:SABINA YEASMIN
D/O KHABIR ALI
R/O VILL- KANAISUBA
P.O.HAWLI MOHANPUR
P.S. MANGALDOI
DIST. DARRANG
ASSA

Advocate for the Petitioner : MR G R A MOTTAQUEE

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 09.02.2024

Heard Mr. G. R. A. Mottaquee, learned counsel for the petitioners. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

This is an application under Section 482 of the Code of Criminal Procedure, 1973 praying for setting aside and quashing the Orders dated 07.01.2023 & 13.12.2023, passed by the learned SDJM (S) Darrang, Mangaldai in connection with C.R. Case No. 38/2023, under Section 406 of the Indian Penal Code.

It is submitted by Mr. Mottaquee, learned counsel for the petitioners, that the accused was regularly appearing before the learned Court below, however on 07.10.2023, due to his illness, he could not appear before the learned Court below and accordingly, the NBWA was issued along with a notice to the bailor. He further submitted that the next date is fixed on 13.12.2023 and accordingly the learned engaged counsel instructed his proxy counsel to appear before the learned Court below, however, later on it was informed that he could not appear and thus, the accused remain unrepresented though the medical report was also collected by the petitioner to substantiate his plea of illness. On 13.12.2023, the fresh warrant was issued against the present accused/petitioner No. 1 and the bail bond of the petitioner No. 2 stand cancelled and the Misc. Case was registered under Section 446 Cr.P.C. against the present petitioner No.

2. The petitioner No. 2 is the father of the petitioner No. 1, who stood as his bailor, and he was regularly producing the accused/petitioner No. 1 before the learned Court below. However, due to his illness, he could not appear on 2 (two) consecutive dates, i.e. on 07.10.2023 & 13.12.2023, and considering his absence, the learned Court below issued the NBWA against the petitioner No. 1 and also started proceeding under Section 446 Cr.P.C. against the petitioner No. 2, who stood as a bailor for the petitioner No. 1. He further submitted that the accused petitioner No. 1 was regularly appearing before the learned Court below and he is still ready and willing to appear before the learned Court below as and when the date is fixed by the Court. Accordingly, he prays for setting aside and quashing the Orders dated 07.10.2023 and 13.12.2023.

In this context, Mr. Parasar, learned Additional Public Prosecutor, has submitted that from the orders annexed by the learned counsel for the petitioners, it is seen that the accused was regularly appearing before the learned Court below till 07.10.2023. However, he remain absent without steps on 07.10.2023 & 13.12.2023 and considering his absence, the learned Court below passed the order issuing NBWA against him and a proceeding was started under Section 446 Cr.P.C. against the petitioner No. 2. Accordingly, he submitted that the petitioner No. 1 may be directed to appear before the learned Court below seeking regular bail.

Considering the entire circumstances of this case and also considering the earlier conduct of the accused/petitioner No. 1, I find it justified to direct the accused/petitioner No. 1 to appear before the learned Court below within 15 (fifteen) days from today with a regular bail application, which will be considered by the learned Court below in accordance with law. Further, the

petitioner No. 2 is also hereby directed to appear before the learned Court below in Misc. Case No. 11/2023 with an appropriate petition. However, till 15 (fifteen) days from the date of order, the execution of NBWA, issued against the accused/ petitioner No. 1 shall remain suspended/stayed.

In terms of above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant