

GAHC010029092024



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

Case No. : Crl.Pet./172/2024

GOPAL SARKAR
S/O NIPENDRA CH. SARKAR
R/O ANDURABHA PATH
ODALBAKRA, GUWAHATI-34,
P.S. DISPUR, DIST. KAMRUP (M), ASSAM

VERSUS

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

2:S.I. SOUMAR JYOTI ROY
S/O DWEPENDRA ROY
C/O PALTAN BAZAR POLICE STATION

GUWAHATI
KAMRUP (M)
ASSA

Advocate for the Petitioner : MR P DAS

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 17.02.2024

Heard Mr. P. Das, learned counsel for the petitioner. 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 for setting aside and quashing the impugned Orders dated 22.06.2022 & 16.09.2022 as well as the other subsequent Orders, passed by the learned Additional Session Judge No. 3, Kamrup(M), Guwahati in NDPS Case No. 141/2022, whereby the learned Court below issued NBWA and P & A against the present petitioner.

It is submitted by Mr. Das, learned counsel for the petitioner, that the present accused/petitioner is innocent and he is no way involved in the alleged offence. However he is shown as absconder in the Charge-Sheet, though the petitioner was not aware about the pendency of this case. The learned Additional Session Judge No. 3, Kamrup(M), Guwahati did not pass any order issuing summon and without applying the judicial mind, directly passed the order issuing NBWA against the present petitioner on the very first date of the submission of the Charge-Sheet. He was supposed to appear before the learned Court below, but in the meantime, the learned Court below also issued P&A against him vide Orders dated 16.09.2022. He is ready and willing to appear before the learned Court below to face the trial, however there is an

apprehension of arrest on the strength of NBWA as well as P&A issued against him and hence, the present petition has been filed for quashing of the said impugned Orders dated 22.06.2022 & 16.09.2022 as well as the other subsequent Orders thereof.

In this context, Mr. Borthakur, learned Additional Public Prosecutor, has submitted that the petitioner may be directed to appear before the learned Court below.

Considering the submissions made by the learned counsels for both sides and also considering the entire aspects of the case, it is provided that the petitioner shall appear before the learned Court below within 10 (ten) days from the date of this order and till his appearance, the execution of NBWA and P&A, issued against the present petitioner, vide Orders dated 22.06.2022 & 16.09.2022, and all subsequent orders, by the learned Additional Session Judge No. 3, Kamrup(M), Guwahati in NDPS Case No. 141/2022, shall be kept in abeyance subject to the condition that if the petitioner failed to appear before the learned Court below within the period of 10 (ten) days from the date of this order, this order will stand cancelled automatically.

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

JUDGE

Comparing Assistant