

GAHC010051032024



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

Case No. : Crl.Pet./300/2024

ASHIM JYOTI KHANIKAR
S/O LATE MONU KHANIKAR, R/O VILL- CHARING, MAJGAON, P.O.-
CHARING, P.S.-GAURISAGAR, DIST- SIVSAGAR, ASSAM, PIN-785661

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:THE DIVISIONAL FOREST OFFICER
DIGBOI FOREST DIVISION
DIGBO

Advocate for the Petitioner : MR. T DEURI

Advocate for the Respondent : PP, ASSAM

BEFORE

HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

20.03.2024

Heard Mr. T. Deuri, learned counsel for the petitioner. Also heard Mr. R.

Borthakur, learned counsel appearing on behalf of Special Public Prosecutor, Wild Life, Mr. B. Gogoi.

This application under Section 482 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Ashim Jyoti Khanikar, impugning the Judgment and Order dated 09.06.2012, passed by learned Sub-Divisional Judicial Magistrate, Margherita in C.R. Case No. 6/2017, whereby, warrant of arrest was issued against the present petitioner. In this case, the petitioner has also impugned the order dated 14.10.2022, whereby the learned Sub-Divisional Judicial Magistrate, Margherita had issued order for proclamation of the present petitioner as an absconder and attachment of his properties.

Learned counsel for the petitioner has submitted that on the basis of an offence report filed by Shri J.R. Das, Assam Conservator of Forest of the C.R. Case No. 6/2017, was registered.

It is also submitted by the learned counsel for the petitioner that though the court of learned Sub-Divisional Judicial Magistrate, Margherita by order dated 31.03.2018 had stated therein that summons issued to the petitioner had returned after service. However, he has never received any summons from the court of learned Sub-Divisional Judicial Magistrate, Margherita SDJM, Margherita.

It is also submitted by the learned counsel for the petitioner that the court thereafter issued bailable warrant of arrest. However, without receiving any report of the execution order, otherwise of the said bailable warrant of arrest, learned learned Sub-Divisional Judicial Magistrate, Margherita issued non-bailable warrant of arrest against the present petitioner and thereafter, by order dated 14.10.2022, ordered issuance of proclamation of the petitioner as an absconder and attachment of his properties.

It is also submitted by the learned counsel for the petitioner that the petitioner is ready to co-operate in his trial.

I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record.

On perusal of the order dated 31.03.2018, passed in C.R. Case No. 06/2017, it appears that though it is mentioned that summons have issued to the accsued persons have returned after service. However, the order is silent as to whom the said summons were served. Similarly, on perusal of the order dated 09.06.2022, it appears that though waiting for the report of execution of bailable warrant of arrest issued by the court, the trial proceeded with issuing non-bailable warrant of arrest against the present petitioner which does not appear to be proper procedure.

Considering the submissions made by learned counsel for the petitioner that the petitioner is willing to appear before the trial court and co-operate in the trial.

This criminal petition is disposed of with a direction that the petitioner shall appear before the court of learned Sub-Divisional Judicial Magistrate, Margherita within a period of 15 days from the date of this order, and to facilitate his appearance before the trial court on the said date, the operation of impugned order dated 14.10.2022 as well as the operation of non-bailable warrant of arrest issued against the above named petitioner by the court of learned Sub-Divisional Judicial Magistrate, Margherita shall be kept in abeyance for next 15 days.

On his appearance before the learned Sub-Divisional Judicial Magistrate, Margherita, the petitioner shall be at liberty to pray for any relief to which he is legally entitled to.

With this observation, this criminal petition is hereby disposed of.

JUDGE

Comparing Assistant