

GAHC010051802024



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

Case No. : I.A.(CrI.)/249/2024

USHARANI SHYAM @ USHA SHYAM
D/O PUSPA SHYAM
R/O NIZ MANKOTA KHANIA GAON
P.O. C.R. BUILDING
P.S. MILAN NAGAR
DIST. DIBRUGARH, ASSAM

VERSUS

HARI NARAYAN DEORI
S/O SRI SASHI PRASAD DEORI R/O WARD NO. 3, NAKARI P.O. AND P.S.
NORTH LAKHIMPUR DIST. LAKHIMPUR, ASSAM PIN-787001.

Advocate for the Petitioner : MR. S ISLAM

Advocate for the Respondent :

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 27.03.2024

Heard Mr. S. Islam, learned counsel for the petitioner.

This interlocutory application has been filed with a prayer for modification/correction of the order dated 23.02.2024, passed by this Court in Crl. Petn. No. 203/2024.

It is submitted by Mr. Islam, learned counsel for the petitioner, that in the order dated 23.02.2024, passed in Crl. Petn. No. 203/2024, the case number of the learned Court below, i.e. N.I. Case No. 37/2021, under Section 138 of the N.I. Act, is not mentioned and for which she could not appear before the learned Court below as per the direction of this Court and hence, the present application has been filed for modification of the order praying to insert the case number wherever it is necessary and directing the accused/petitioner to appear before the learned Court below positively on 28.03.2024.

Considering the submission made by the learned counsel for the petitioner, the present interlocutory application stands allowed and the order dated 23.02.2024, passed in Crl. Petn. No. 203/2024, stands corrected and modified to the extent indicated below along with a direction to appear before the learned Court below positively on 28.03.2024:

"...

This application filed under Section 482 of the Code of Criminal Procedure, 1973 praying for setting aside and quashing of the impugned orders dated 17.06.2023 and subsequent orders passed by the learned Judicial Magistrate 1st Class, Lakhimpur in N.I. Case No. 37/2021, under Section 138 of the N.I. Act.

It is contended by the petitioner that after receipt of summon from the Court of learned Judicial Magistrate 1st Class, Lakhimpur, in N.I. Case No. 37/2021, the

petitioner appeared before the Trial Court and participated in the case. The petitioner is a Government employee in Health Department and her higher officials did not grant leave to her for appearing before the Trial Court and accordingly, she filed petition before Trial Court vide petition No.1678/2023 seeking for adjournment. But, without considering the same, the Trial Court issued NBWA against the petitioner vide order dated 17.06.2023 and subsequent orders, and the next date was fixed on 28.02.2024 for her appearance. Further, she is ready and willing to appear before Trial Court and also ready to contest the case, if, she is granted with the privilege of interim protection till her appearance before the said Court.

...

Considering the submissions made by the learned counsels of both sides as well as after perusing the case record along with the annexure, especially orders sheet filed along with the petition, it is provided that the petitioner shall appear before the learned Court below on or before 28.03.2024 in N.I. Case No. 37/2021, under Section 138 of the N.I. Act, and on her appearance and on her filing a petition for grant of bail, the learned Court below shall consider the same in accordance with law.

Till then, the execution of NBWA issued against the accused/petitioner in N.I. Case No. 37/2021, under Section 138 of the N.I. Act, be stayed, enabling the petitioner to appear before the learned Court below on or before 28.03.2024 for filing fresh application for regular bail.

..."

This order may be treated to be a part of the order dated 23.02.2024, passed in Crl. Petn. No. 203/2024.

In terms of above, this interlocutory application stands disposed of.

JUDGE

Comparing Assistant