

GAHC010056982024



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

Case No. : Crl.Pet./308/2024

JUGEN BARUAH AND ANR
S/O LATE KULEIDHAR BARUAH, R/O MATHURAPUR PHUKAN GAON, P.O.
AND P.S.-MATHURAPUR, DIST- CHARAIDEO, ASSAM

2: NRIPEN BURAGOHAIN
S/O PRITI BURAGOHAIN
R/O VILL- KOWOIMARI GAON
P.O.-GOSPURIA
P.S.-MORAN
DIST- DIBRUGARH
STATE - ASSA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. S J SARMAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 20.03.2024

Heard Mr. S. J. Sarmah, learned counsel for the petitioners. Also heard Mr. R. R. Kaushik, learned Additional Public Prosecutor for the State.

This application under Section 482 of the Code of Criminal Procedure, 1973 has been filed by the petitioners, namely, Sri Jugen Baruah and Sri Nripen Buragohain impugning the order dated 01.03.2024 whereby the Court of Judicial Magistrate, 1st Class, Sivasagar issued Non-bailable Warrant of Arrest against the present petitioners in PRC Case No. 35/2024.

Learned counsel for the petitioners has submitted that on the basis of an FIR dated 01.08.2023 filed by one Sri Prabitra Kalita before the Officer-in-Charge of Demow P.S. Case No. 47/2023 under Section 395 of the Indian Penal Code was registered and investigation was initiated. Ultimately, after completion of the investigation, charge-sheet was laid on 31.12.2023 against the nine numbers of the accused persons including the present petitioners under Sections 120(B)/395/506 of the Indian Penal Code read with Section 25(1A) of the Arms Act.

Learned counsel for the petitioners has submitted that on receipt of the charge-sheet, the Court of learned Judicial Magistrate, 1st Class by order dated 01.03.2024, at the first instant, instead of issuing summons against the present petitioners issued non-bailable warrant against both the petitioners merely because of the fact that both the petitioners were shown as absconder in the charge-sheet.

It is submitted by learned counsel for the petitioner that the law is settled in this regard that even if the accused persons are shown as absconder in the charge-sheet, the trial court ought to have issued summons to the petitioners at the first instant, which the learned Judicial Magistrate, 1st Class has not done.

Learned counsel for the petitioners also submitted that the next date of the case is fixed on 22.04.2024 and both the petitioners are ready to appear before the trial court and ready to cooperate with the trial and they may be given some interim protection so as to facilitate their appearance before the trial court.

I have heard the learned counsel for both sides and have perused the materials on record.

It appears from the order dated 01.03.2023 passed in PRC Case No. 35/2024 that as submitted by learned counsel for the petitioner, the Judicial Magistrate, 1st Class has issued non-bailable warrant of arrest against both the petitioners at the first instance without issuing any summons to them which was not the correct procedure to be followed.

Considering the fact that the petitioners are willing to cooperate in the trial and are ready to appear before the trial court on the next fixed date, this criminal petition is disposed of with a direction to the above named petitioners to appear before the Court of learned Judicial Magistrate, 1st Class, Sivasagar on 22.04.2024 and to facilitate their appearance before the said court, the operation of non-bailable warrant of arrest issued against them by the learned Judicial Magistrate, 1st Class, Sivasagar shall be kept in abeyance till that date i.e., 22.04.2024. On their appearance before the trial court, the petitioners may pray for any relief to which they are legally entitled to.

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

JUDGE

Comparing Assistant