

GAHC010065932024



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

Case No. : Crl.Pet./366/2024

SURHAB ALI
S/O LATE MOHAMMOD ALI, VILL- JAKHLIBIL PATHAR, P.S.-
GOBARDHANA, DIST- BAKSA, BTC, ASSAM, PIN-783372

VERSUS

ASIF ALOM
S/O LATE TOYAB ALI, VILL- GARIGAON RIVER SIDE, P.S.-JALUKBARI,
DIST- KAMRUP (M), ASSAM, PIN-781012

Advocate for the Petitioner : MR. A M AHMED

Advocate for the Respondent :

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 01.04.2024

Heard Mr. A. M. Ahmed, 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 *read with* Section 438 of the Code of Criminal Procedure, 1973 against the impugned order dated 03.12.2018, passed by the learned SDJM(S) No. II, Kamrup(M), Assam in C.R. Case No. 1692/2015, under Section 138 of the N.I. Act, and the subsequent orders passed therein, whereby the NBWA has been issued against the present petitioner.

It is submitted by Mr. Ahmed, learned counsel for the petitioner, that the summon was sent to the present accused/ petitioner in a wrong address and as a result, he never received any summon from the Court for his appearance and also was not aware about the pendency of the case and issuance of warrant against him. However, subsequently, on 18.03.2024 only, when he received information from the Secretary of VDP about the issuance of NBWA against him and thereafter, on making an enquiry through his engaged counsel, he came to know that the NBWA has been issued against him. Mr. Ahmed further submitted that the petitioner is ready and willing to appear before the learned Court below and to contest the case pending against him if he is allowed to remain on bail.

After hearing the submissions made by the learned counsel for the petitioner, I have perused the case record and the order sheets of the learned Court below annexed along with the petition. It appears from the order sheets that the case is pending since 2016 and due to non-appearance of the present accused/petitioner, the case could not be proceeded further and the same is still at the stage of appearance. However, from the order of the learned Court below dated 05.04.2016, it is seen that the summon was deemed to be served on the accused/petitioner only with the view that the steps was taken to the

accused/petitioner through registered post on 30.01.2016. However, thereafter, on several occasions, the learned Court below issued theailable warrant as well as NBWA to procure the attendance of the present accused/petitioner, Thus, it is seen that the learned Court below took several steps/endeavor to procure the attendance of the accused/petitioner and finally the case is fixed on 16.05.2024 with the similar kind of order for issuance of NBWA.

Hence, considering the entire facts and circumstances of this case and also considering the long pendency of this case, I hereby direct the petitioner to appear before the Court of learned Sub-Divisional Judicial Magistrate (S) No. II, Kamrup (M), Assam within 10 (ten) days from today with an appropriate application for bail which shall be considered in accordance with law. However, till his appearance before the learned Court below, the execution of NBWA, issued against the petitioner, shall remain stayed/suspended.

With the above observation and direction, this criminal petition stands disposed of.

JUDGE

Comparing Assistant