

GAHC010070442024



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

Case No. : I.A.(Crl.)/329/2024

NILU GOGOI @ NILU GOGOI CHETIA
W/O LATE DIBYA CHETIA R/O CHETIA GAON
WARD NO. 5
P.S.NORTH LAKHIMPUR P.O. NORTH LAKHIMPUR PIN- 787001 DIST.
LAKHIMPUR
ASSAM

VERSUS

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

2:SMT. ALAKA DUTTA AHMED @ SMT. ALOKA DUTTA AHMED
W/O MD. SAJU AHMED R/O JALI ROAD
WARD NO. 8
P.S. NORTH LAKHIMPUR
P.O. NORTH LAKHIMPUR PIN-787001 DIST. LAKHIMPUR
ASSAM

Advocate for : MS. S G BARUAH
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 08.04.2024

Heard Ms. S. G. Baruah, learned counsel for the applicant. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

This is an application under Section 389 of the Code of Criminal Procedure, 1973 praying for suspension of sentence and to allow the accused/applicant to go on regular bail.

It is to be mentioned here that the present accused/ applicant has already preferred a criminal revision petition, being CrI. Rev. P. No. 136/2024 against the judgment and order dated 16.02.2024, passed by the learned Sessions Judge, Lakhimpur, North Lakhimpur in Criminal Appeal No. 34(4)/2023, upholding the order of conviction passed by the learned Additional Chief Judicial Magistrate, Lakhimpur, North Lakhimpur vide judgment and order dated 02.09.2023 in C.R. (N.I) Case No. 17/2020, under Section 138 of the Negotiable Instruments Act, 1881, whereby the accused/applicant was directed to pay twice of the cheque amount which is a fine of Rs. 12,00,000/- (Rupees twelve lakhs) only which shall be paid to the complainant as compensation and further directed that the convict shall undergo Simple Imprisonment for 2 (two) years.

It is submitted by Ms. S. G. Baruah, learned counsel for the applicant, that from perusal of the cheque in question, it is seen that there was a overleaping in the amount mentioned in the cheque. It also reveals from the record that the

notices were not properly served and in the same time, it is seen that the respondent/ complainant could not prove his income who gave Rs. 6,00,000/- in cash as loan. There are other grounds also on the basis of which there is possibility of succeeding in the connected revision petition. Further, the present petitioner is at the verge of retirement and if the impugned judgment and order dated 02.09.2023, passed by the learned Additional Chief Judicial Magistrate, Lakhimpur, North Lakhimpur in C.R. (N.I) Case No. 17/2020, under Section 138 of the Negotiable Instruments Act, 1881 as well as the impugned judgment and order dated 16.02.2024, passed by the learned Sessions Judge, Lakhimpur, North Lakhimpur in Criminal Appeal No. 34(4)/2023, are not stayed/suspended, serious prejudice will be caused to the present accused/applicant. More so, there is no chance of absconding of the present accused/applicant, who is a government servant, and is also at the verge of retirement. Further, it is submitted by the learned counsel for the applicant that the learned Additional Chief Judicial Magistrate, Lakhimpur, North Lakhimpur, in C.R. (N.I) Case No. 17/2020, has already issued NBWA against the present accused/applicant and accordingly she prayed for suspending the order of NBWA. If the accused/applicant is arrested in connection with this case, the purpose of filing of the connected revision petition will become infructuous and accordingly prayed for suspending the sentence and also to allow the accused/applicant to go on fresh bail.

After considering the entire submissions made by the learned counsel for the applicant, grounds taken in the revision petition, viz-a-viz the other aspects of the case, the operation of the impugned judgment and order dated 16.02.2024, passed by the learned Sessions Judge, Lakhimpur, North Lakhimpur

in Criminal Appeal No. 34(4)/2023, and the impugned judgment and order dated 02.09.2023, passed by the learned Additional Chief Judicial Magistrate, Lakhimpur, North Lakhimpur in C.R. (N.I) Case No. 17/2020, as well as the order dated 20.02.2024, passed by the learned Additional Chief Judicial Magistrate, Lakhimpur, North Lakhimpur in C.R. (N.I) Case No. 17/2020, issuing NBWA against the present accused/applicant, are hereby stayed/suspended till disposal of the connected criminal revision petition, being CrI. Rev. P. No. 136/2024.

Further, the accused/applicant is hereby allowed to go on bail on furnishing a bond of Rs. 10,000/- with one surety of like amount to the satisfaction of the learned Additional Chief Judicial Magistrate, Lakhimpur, North Lakhimpur.

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

JUDGE

Comparing Assistant