

GAHC010079402024



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

Case No. : Crl.Pet./465/2024

MIJANUL HOQUE
S/O LATE ABDUL JALIL
R/O VILL AND P.O. SOLAPATHAR, P.S. BATADRAVA
DIST. NAGAON, ASSAM, PIN-782122

VERSUS

THE STATE OF ASSAM AND ANR
TO BE REP. BY THE LEARNED PP, ASSAM,

2:SRI SIDHARTHA MALAKAR
S/O SRI SUKUMAR MALAKAR

R/O VILL- SANTIPATTY
P.S. KAMPUR

DIST. NAGAON
ASSAM
PIN-78242

Advocate for the Petitioner : ALHAJJ I UDDIN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

23.04.2024.

Heard Mr. A. I. Uddin, learned counsel for the petitioner. Also heard Mr. P Borthakur, learned Additional Public Prosecutor, Assam.

2. This is an application under section 482 Cr.P.C., assailing an order dated 09.05.2017 and all subsequent orders passed thereafter, by the learned Chief Judicial Magistrate, Nagaon in PRC Case No. 120/2016 corresponding to GR Case No. 1711/2014 arising out of Kampur Police Station Case No. 77/2014.
3. The petitioner along with 6 others were charge-sheeted in the aforesaid police station case and was sent for trial under Section 365/379/302 of IPC.
4. One of the accused namely, Jehirul Islam was declared as absconder by the Investigating Authority. The other accused persons including the present petitioner namely Mijanul Hoque were subsequently granted bail. However, the petitioner remain absent during the stage of appearance as well as at the committal stage. Accordingly, warrant was issued against the petitioner. After splitting up the record, the other accused were sent for trial. One of the accused namely, Mukut Ali @ Jakaria Ansari expired during the pendency of the trial. After the completion of the trial, the learned trial Court acquitted all the other accused persons who participated in the trial by judgment and order dated 17.01.2019 passed in Sessions Case No. 39(N)/2017 in exercise of power under Section 232 of the Cr.P.C.

5. The present petition is filed in the aforesaid backdrop of acquittal of other accused persons for want of evidence with a prayer to set aside the order of issuing Warrant of Arrest and to recall the NBWA issued against the petitioner.
6. This Court is of the view that the petitioner shall appear before the learned committal Court below on or before 29.04.2024 and he may file appropriate application for grant of bail. In the event such application is filed, the learned committal court shall consider the same as per law including the factum of the acquittal of the other accused persons for want of evidence. Ordered accordingly. .
7. Till such consideration is made, the NBWA issued on 09.05.2017 and all subsequent orders passed thereafter against the petitioner shall remain suspended.
8. While parting with the record, it is clarified that this court has not commented on merit of explanation given and the learned trial court shall apply its own mind in deciding any application pursuant to this order and shall not be influenced by any observation made in the case by this court.
9. Accordingly, this criminal petition stands closed.

JUDGE

Comparing Assistant