

GAHC010079482024



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

Case No. : Crl.Pet./461/2024

MIZANUR RAHMAN AND ANR
S/O ABDUL RASHID
R/O VILL BALIJAN
P.O. BARSALA
P.S. LALUK
DIST. LAKHIMPUR, ASSAM

2: SARIFUL ISLAM @ SHARIFUL ISLAM @ SHORIFUL ISL.
R/O VILL BALIJAN
P.O. BARSALA
P.S. LALUK
DIST. LAKHIMPUR
ASSA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MAHIBUR RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
ORDER

05. 06. 2024

1. Heard Mr. M Rahman, learned counsel for the petition and Mr. B Sarma, learned Additional Public Prosecutor, Assam.
2. The present application is filed under Section 482 Cr.P.C. read with Section 401/397 of the said Code assailing the orders dated 03.04.2024, 16.11.2023 and 20.01.2024 passed by the learned Additional CJM, Lakhimpur, North Lakhimpur in PRC No. 904/2023 under 420 IPC arising out of North Lakhimpur PS case No. 1244/2014 corresponding to GR case No. 2297/2014.
3. One FIR was lodged by one ASI, Lalit Kakati inter alia alleging that one Rhino Horn brought by poacher for sale was recovered from the possession of one, Mizanur Rahman (petitioner No. 1), Md. Sariful Islan @ Shariful Islam @ Shoriful Isl (petitioner No. 2) and one Md. Amzad Ali. Accordingly, the FIR was registered under Section 5 Assam Rhinoceros Preservation Act, 1954. After completion of the investigation, charge-sheet under Section 420 IPC was laid by the investigating authority. The accused persons were arrested and subsequently they were released on bail. The learned Magistrate in PRC No. 904/2023 on 01.07.2023 issued summon to the accused persons including the petitioners. However, the summons to the present two petitioners were returned un-served, which is reflected in the order of the learned Magistrate dated 08.09.2023. Accordingly, on 08.09.2023, the learned Magistrate issued BWA of Rs. 2,000/- each against the present petitioners fixing the matter on 16.11.2023. On 16.11.2023, a report was submitted that the warrant could not be executed as Gaoburah reported that the petitioners are not residents of the said locality. Accordingly, on 16.11.2023, NBWA and P&A against the petitioners were issued. Thereafter, on 20.01.2024, a reported was

produced reflecting that the residence of both the petitioners falls under the jurisdiction of Laluk PS and thereafter P&A was directed to be issued through the O/C of Laluk PS. According to the petitioner, after the P&A was issued through office of the Laluk Police Station they became aware of the fact of issuance of summon, BWA, NBWA and P&A. It is submitted by the learned counsel for the petitioners that the petitioners shall duly participate in the trial and they were not aware of issuance of any summon, warrant of arrest as the admittedly warrant and summons were issued to incorrect address.

4. Considered the aforesaid submissions and perused the order sheet of the Magistrate.

5. From the order of the learned Magistrate, it is clear that on 16.11.2023, a report was submitted by Gaoburah to the effect that the petitioners are not residents of the locality, where their addresses are shown. However, the learned Magistrate had issued the NBWA and P&A, even after such report. This court is of the view that such course of action is not permissible, when a report has already been submitted that the petitioners are not residents of the locality, which is shown to be their addresses in the summon, NBWA and P&A were issued. The order dated 20.01.2024 further fortifies the fact that the petitioners are residents under jurisdiction of another police station i.e. Laluk PS and accordingly, the P&A and NBWA were diverted to that PS. Therefore, it is clear from the aforesaid fact that the petitioners have not avoided the warrant or summon voluntarily, rather such summons, NBWA were addressed to a place, which is not the place of residence of the petitioners.

6. In view of the above, this court is of un-hesitant view that the

petitioners have been able to make out a case for recall of the warrant and P&A.

7. Accordingly, the warrant of arrest as well as P&A is set aside. The petitioners are permitted to appear before the learned Magistrate and file appropriate application for bail inasmuch as the petitioners had already been released on bail during the investigation.

8. It is submitted by the petitioners that next date is fixed before the trial court on 15.06.2024. The petitioners shall appear before the learned trial court on that date.

JUDGE

Comparing Assistant