

GAHC010082632024



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

Case No. : Crl.Pet./481/2024

RUPAK BORAH
S/O JOGENDRA KR. BORAH
R/O VIL- MIKIRBORACHUK
P.O. KALABARI, P.S. GOHPUR
DIST. BISWANATH, ASSAM,
PIN-784178

VERSUS

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

2:SMT. ANJANA BHATTACHARYA
W/O DHANESWAR SHARMA
R/O HQR. 13TH APBN
LILABARI
P.O. AND P.S. LILABARI NORTH LAKHIMPUR
DIST. LAKHIMPUR
ASSAM
PIN-78705

Advocate for the Petitioner : MR. D BORAH

Advocate for the Respondent : PP, ASSAM

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

ORDER

26.04.2024

1. Heard Mr. D. Borah, learned counsel for the petitioner. Also heard Mr. K. K. Parashar, learned Additional Public Prosecutor for the State of Assam.
2. The present application is filed under Section 482 of the Code of Criminal Procedure, 1973 for setting aside and quashing the impugned orders dated 05.02.2024 & 01.04.2024 passed by the learned Additional Chief Judicial Magistrate, Lakhimpur, North Lakhimpur issuing Non-Bailable Warrant of Arrest (NBWA) against the petitioner in connection with N.I. Case No. 42/2015 under Section 138 of N.I.Act.
3. The petitioner is an accused in N.I. Case No. 42/2015 pending before the learned Additional Chief Judicial Magistrate, Lakhimpur, North Lakhimpur under Section 138 of the N. I. Act.
4. It is the case of the petitioner that though the petitioner was regularly attending and participating in the proceeding before the Magistrate, however, on 05.02.2024, when the matter was fixed, he did not appear before the Court and accordingly, a Non-Bailable Warrant of Arrest (NBWA) has been against him.
5. It is the further case of the petitioner that he could not intimate his lawyer for the reason that he met with a road traffic accident on 07.12.2023 and was severely injured. Thereafter, he was hospitalized and after certain treatment, he was released on 14.12.2023. However, as he had serious spinal fracture, he could not contact his lawyer to intimate about such a situation. Accordingly, he defaulted in appearing in the Court. In support of such contention, the petitioner

has annexed the discharge certificate issued by the Hospital in which the petitioner was admitted.

6. The learned counsel for the petitioner submits that now the petitioner is fit and shall be able to participate in the proceeding pending before the trial Court and he had never defaulted earlier in appearing before the Court and assures that he will continue to be present and take appropriate steps in the proceeding, if the NBWA is recalled.
7. This Court is of the view that the explanation given by the petitioner is sufficient to recall the NBWA issued against him. However, instead of passing an order by this Court, in exercise of power under Section 482 of the Cr.P.C., the consideration should be made by the learned trial Court inasmuch as the petitioner has not approached the learned trial Court. Therefore, the petitioner is directed to approach the learned trial Court below and to file an application in this regard. On such application being filed, the same be considered as per law taking note of the observations made in this order.
8. Till such consideration is made and decision is taken, impugned orders dated 05.02.2024 & 01.04.2024 passed by the learned Additional Chief Judicial Magistrate, Lakhimpur, North Lakhimpur issuing Non-Bailable Warrant of Arrest (NBWA) against the petitioner in connection with N.I. Case No. 42/2015 under Section 138 of N.I.Act, shall remain suspended.
9. This criminal petition stands disposed of accordingly.

JUDGE

Comparing Assistant