

GAHC010146432023



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

Case No. : Crl.Pet./693/2023

MUSTAFA KAMAL PASSA @ MUSTAFA KAMAL PASA
S/O- LATE AMSAR ALI MUKTAR, PERMANENT RESIDENT OF R.D.M. ROAD,
AMIN PATTY, P.O. NAGAON, P.S. NAGAON SADAR, DIST. NAGAON, ASSAM
AND PRESENTLY RESIDING AT FLAT NO. 301, SHANTI TIRTHA
APARTMENT, MILANPUR PATH, NEAR HDFC BANK, BELTOLA BRANCH,
BELTOLA, GUWAHATI-781028, DIST. KAMRUP(M), ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:MD. FOKAR UDDIN
S/O- LATE ABDUL HOQUE
R/O- VILL.- KOCH GAON
P.S. RUPOHIHAT
DIST. NAGAON
ASSA

Advocate for the Petitioner : M K BORAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 29-05-2024

Heard Mr. M.K. Borah, learned counsel for the petitioner as well as Mr. S. Nawaz, learned counsel for the respondent no.2 and Mr. D. Das, learned APP for the State respondent.

2. This is an application under section 482 Cr.P.C. for quashing of the proceeding under number NI case no.84/2015 pending before the learned Court of the Additional Chief Judicial Magistrate, Nagaon.

3. It is submitted by Mr. Borah that the present accused petitioner is suffering from BM Urethroplasty and he has already undergone surgery in 2020 and presently the petitioner is unable to go for journey and walk for a long time and he cannot even drive a vehicle. After every interval of three months the petitioner has to go to Chennai to change the urine tube which was installed through the surgery conducted in the year 2020. For that reason only the petitioner could not appear before the learned Court below in each and every date of trial because of his ailment and initially those were allowed by the learned Court below and subsequently considering his absence, the NBWA was issued. However, it is submitted by the learned counsel for the petitioner that NBWA has already been recalled vide order dated 28.03.2024 passed in IA (Crl) 301/2024. He further submitted that the petitioner is ready and willing to appear before the learned Court below and to contest the case if his personal appearance is dispensed with by the learned Court below due to his ill health condition.

4. However by the criminal petition he also prayed for setting aside and quashing of the entire criminal proceeding initiated under NIA case no. 84/2015

pending before the Court of learned Additional Chief Judicial Magistrate, Nagaon.

5. In this context, Mr. Nawaz, learned counsel for the respondent no.2 submitted that the case is at the stage of argument and the respondent has no objection if the petitioner is represented by his engaged counsel and the learned Court below allows any petition to represent the petitioner under section 205 IPC.

6. Mr. Das, learned APP submitted in this regard that the State has no objection if the petition for representation is allowed by the learned Court below and the case is proceed accordingly.

7. Considering the submissions made by the learned counsel for the both sides and on perusal of the entire aspects of the case, I find that this is not a case wherein the entire proceeding can be set aside and quashed by exercising the power under section 482 Cr.P.C. However, the learned Court below may consider the prayer for representation of the petitioner who is suffering from a vulnerable disease and may dispose of the matter by hearing the arguments from both sides as early as possible.

8. Also it is further directed that both sides shall appear before the learned Court below on 14.06.2024 as on the date fixed by the Court learned Additional Chief Judicial Magistrate, Nagaon.

9. With the above directions, this petition stands disposed of.
10. The interim order passed earlier stands vacated.

JUDGE

Comparing Assistant