

GAHC010151202024



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

Case No. : Crl.Pet./890/2024

NITUN GAYAN
S/O LATE BANAMALI GAYAN
VILL-MURHANI, PO. CHALCHALI
PURONIGUDAM, P.S. SAMAGURI,
DIST. NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PP, ASSAM

2:MUSTT. MUSLIMA KHATUN
W/O LATE HADIS HUSSAIN
VIL- ADP ROAD
CHRISTIANPATTY
P.O. NAGAON
P.S. SADAR
DIST. NAGAON
ASSA

Advocate for the Petitioner : MS. G BORAH,

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

02.08.2024

Heard Ms. G. Borah, learned counsel for the petitioner. Also heard Mr. K. K. Parasar, learned Additional Public Prosecutor for the State respondent.

This application filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 praying for quashing of the order dated 15.06.2024 and 15.07.2024, passed by the learned Court of Chief Judicial Magistrate, Nagaon, Assam, in N. I. Case No. 93/2016, whereby, a Non-Bailable Warrant was issued against the petitioner.

It is submitted by the learned counsel for the petitioner, Ms. Borah, that after the conviction order was passed by the learned Chief Judicial Magistrate, Nagaon, in N.I. Case No. 93/2016, the present petitioner filed an appeal against the said order. During the pendency of the appeal, his previously engaged counsel passed away, and he engaged new counsel. However, the newly engaged counsel informed him that the case had already been disposed of and that he did not need to appear before the court. Consequently, the petitioner presumed that he did not need to appear before the trial court.

Due to his non-appearance, the trial court issued a Non-Bailable Warrant of Arrest (NBWA) against the petitioner for failing to appear before the learned Chief Judicial Magistrate, Nagaon, on 15.06.2024, and subsequently on 15.07.2024. However, it is submitted that the petitioner was unaware that he was required to appear before the trial court, as he had been advised by his new counsel that his presence was not needed. The appeal is still at the stage

of admission hearing, and the petitioner was asked to deposit 20% of the amount. Despite this, the NBWA was issued against him.

Accordingly, the petitioner prays for the setting aside and quashing of the orders dated 15.06.2024 and 15.07.2024, whereby, the NBWA was issued. He is ready and willing to appear before the trial court and accordingly prays for some interim protection.

In this regard, Mr. Parasar, learned Additional Public Prosecutor has raised no objection in granting interim protection till appearance of the accused/petitioner before the learned Trial Court.

Considering the submissions of learned counsels for both sides and also considering the entire facts and circumstances of the case, it is provided that the petitioner shall appear before the learned Court below within 10 (ten) days from today and on his appearance and on his filing a petition for grant of regular bail, the learned Court below shall consider the same in accordance with law. Till then, the NBWA issued against the accused/petitioner by the Trial Court, if any, shall be stayed.

In terms of above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant