

GAHC010154082024



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

Case No. : Crl.Rev.P./291/2024

SUTAN SAHA
S/O LATE RAVI SAHA, R/O VILL- KADAM TOLA (MISSION ROAD), P.S.-
BARPETA ROAD, DIST-BARPETA, ASSAM, PIN-

VERSUS

BIREN DEV NATH
S/O LATE SURENDRA DEV NATH, R/O WARD NO. 4, KALAHBHANGA, P.S.-
BARPETA ROAD, DIST- BARPETA, ASSAM, PIN-

Advocate for the Petitioner : MR. A R SIKDAR, MR. S I TALUKDAR

Advocate for the Respondent : ,

Linked Case : I.A.(Crl.)/736/2024

SUTAN SAHA
S/O LATE RAVI SAHA
R/O VILL- KADAM TOLA (MISSION ROAD)
P.S.-BARPETA ROAD
DIST-BARPETA
ASSAM
PIN-

VERSUS

BIREN DEV NATH
S/O LATE SURENDRA DEV NATH
R/O WARD NO. 4
KALAHBHANGA
P.S.-BARPETA ROAD
DIST- BARPETA
ASSAM
PIN-

Advocate for : MR. A R SIKDAR
Advocate for : appearing for BIREN DEV NATH

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

28.08.2024

1. Heard learned counsel Mr. A. R. Sikdar for the petitioner Sutan Saha.
2. The application has been filed by the petitioner under Section 442/528 of the BNSS, 2023 read with Article 226 of the Constitution of India. The petitioner has prayed for setting aside the impugned order dated 15.07.2021,(Annexure-5), passed in NI Case No. 134/2021 passed by the learned SDJM(S), Barpeta rejecting the bail petition No. 4219/2024 issuing NBWA against the petitioner. The petitioner has also prayed for suspension of the operation of the order dated 15.07.2024 enabling him to pay the compensation. In the NI Case No. 134/2021 vide Judgment and Order dated 07.06.2023, the petitioner/accused was convicted under Section 138 of the NI Act and sentenced to undergo simple imprisonment for 3 months and a compensation of Rs. 6 lacs. Against this order, the petitioner has preferred an appeal which was registered as I.A. Criminal No. 434/2024. The appeal was dismissed by the learned Additional Sessions Judge

and the petitioner was directed to pay Rs. 6 lacs upholding the order of conviction and sentence passed by the learned SDJM(S), Barpeta. The petitioner's wife appeared before the learned Trial Court with a petition No. 4219/2024 and vide order dated 15.07.2024, the learned SDJM(S), Barpeta rejected the petition and issued NBWA observing that no stay was granted by this Court in connection with I. A. Criminal No. 434/2024.

3. It is submitted on behalf of the petitioner that against the Judgment and Order of the learned Sessions judge upholding the order of conviction in a separate revision petition filed by the petitioner which is registered as Revision Serial No. 3809/2024. The petitioner is aggrieved by the sentence of imprisonment but he is willing to pay the entire amount. He has already deposited Rs. 1,50,000/- and the petitioner is willing to pay the remaining amount of Rs. 4,50,000/-. The petitioner is apprehending that he would be forwarded to custody as NBWA has been issued by the Trial Court. The petitioner has prayed to set aside the order dated 15.07.2024 in connection with

NI	Case	No.	134/2021.
----	------	-----	-----------

4. I have taken a pragmatic view as the petitioner is willing to pay the fine amount. Equity will prevail if the petitioner is allowed to appear before the Court and pay the fine amount.

5. I deem it proper to set aside the order issuing NBWA against the petitioner. The petitioner is hereby directed to appear before the learned Trial Court and pay the remaining fine amount as he is willing to pay the amount.

6. On failure of the petitioner to pay the fine amount, the Trial Court may pass necessary orders.

7. It is also submitted by the petitioner that he is unable to pay the entire fine

amount and that he may be allowed to pay the complete fine amount in 3 installments.

8. The petitioner may file an application before the Trial Court for paying the fine amount within a certain period of time, and the Court may pass an order which the Court deems fit and proper.

9. In terms of the above observation, application stands disposed of.

JUDGE

Comparing Assistant