

GAHC010169832024



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

Case No. : Crl.Pet./1024/2024

AMINUR RAHMAN
S/O KHALILUR RAHMAN
RESIDENT OF VILLAGE BASHIMARI, PS FAKIRAGRAM, DIST
KOKRAJHAR, BTR, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY PP ASSAM

2:MD. SAHID ZAMAL SHEIKH

S/O LATE BASIR UDDIN SHEIKH

RESIDENT OF VILLAGE JOYPUR
PS AND PO KOKRAJHAR DIST KOKRAJHAR
BTR
ASSAM 78337

Advocate for the Petitioner : MR. M A MONDAL, MR. A ISLAM

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA
ORDER

21.08.2024

Heard Mr. M A Mondal, learned counsel for the petitioner as well as Mr. D. Das, learned Additional Public Prosecutor, Assam.

This is an application filed under section 528 of the BNSS Act, 2023 praying for setting aside the impugned order dated 03.06.2024 passed by the learned Sessions Judge, Kokrajhar in Criminal Appeal No. 18/2023.

Md. Sahid Zamal Seikh filed a complaint case against the present petitioner under section 138 of the NI Act. The trial court found the present petitioner to be guilty and, therefore, sentenced him to pay fine of Rs.9,05,000/-. Thereafter, the present petitioner filed an appeal before the Court of Sessions, Kokrajhar.

The appellate court admitted the appeal directing issue of Notice to the respondent no. 2. On many occasions, the notice was not served upon the respondent no. 2. On 03.06.2024, the appellant was absent before the appellate court. The respondent no. 2 was also absent. The trial court held that since 27.09.2023 the case was pending in the appellate court and the present petitioner did not take any steps for issuing notice upon the respondent no. 2, the appellate court dismissed the appeal.

Thereafter, the trial court issued NBWA against the present petitioner. Accordingly the petitioner was arrested and since 01.08.2024, he has been in jail.

I have considered the submission made by the learned counsel of both sides.

This court is of the opinion that the petitioner should be given an opportunity to prosecute the appeal. Therefore, the impugned order is set aside.

The present petitioner Mr. Aminur Rahman is directed to appear before the court below on 09.09.2024 on which date, he shall file a copy of this order.

It is further directed that the petitioner Aminur Rahman, who is in jail in connection with CR NI Case No. 12/2023 shall be released on bail of Rs.25,000/- with one surety of like amount to the satisfaction of the learned Chief Judicial Magistrate, Kokrajhar.

The bail application is disposed of.

JUDGE

Comparing Assistant