

GAHC010170392024



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

Case No. : MC/63/2024

BADSHA ALI @ BADSHA MIAH@ BADSHA MIYA
S/O- MD. LAL MIAH@ LALMIYA ALI@ LAL MIYA, R/O- NO.1 RASULPAR,
P.S- BALUGURI, DIST- BARPETA, ASSAM

VERSUS

THE UNION OF INDIA and 4 ORS
REP. BY THE SECRETARY, HOME DEPARTMENT

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HOME DEPARTMENT
GUWAHATI- 781006

3:THE SUPERINTENDENT OF POLICEB
KAMRUP DISTRICT
GUWAHATI

4:THE DEPUTY COMMISSIONERELECTION
BARPETA DISTRICT
BARPETA
ASSAM

5:THE DIRECTOR GENERAL OF POLICE
REHABARI
GUWAHATI- 781008
DIST- KAMRUPM
ASSA

Advocate for the Petitioner : MR. J ABBAS,

Advocate for the Respondent : GA, ASSAM, ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 11.09.2024

(K.R. Surana, J)

Heard Mr. J. Abbas, learned counsel for the petitioner. Also heard Mr. K.K. Parasar, learned CGC, Mr. H.K. Hazarika, learned Junior Govt. advocate, Mr. G. Sarma, learned standing counsel for the FT and Mr. H. Kuli, learned counsel appearing on behalf of Mr. A.I. Ali, learned standing counsel for the ECI.

2. By filing this misc case, the petitioner who is the writ petitioner in the connected WP(C) 5442/2017 has prayed for restoring the writ petition to file, which was dismissed for non-prosecution by order dated 12.06.2024.

3. The learned standing counsel for the FT matters has opposed the application.

4. Upon perusal of the material on record and having heard the learned counsel for the parties, the Court is satisfied that the petitioner has been able to show before the Court that the non-appearance of the learned counsel for the petitioner is duly explained.

5. The records show that the counsel who had filed WP(C) 5442/2017 is Ms. P. Borah, who is the sole advocate for the writ petitioner as appears from the vakalatnama available in the record. The full name of the learned advocate is Ms. Pallavi Borah. Her name and appearance is recorded in the order dated 06.09.2017, passed in the writ petition, by which notice was issued at the initial

stage. The matter was thereafter listed on 08.08.2019. However, in the cause list of 08.08.2019, the name of the learned counsel for the petitioner is mentioned as "Mr. P. Borah" instead of "Ms. P. Borah". Therefore, there was no representation from the petitioner on call. The petitioner has annexed a copy of the order dated 06.09.2017, cause list of 08.08.2019 and a copy of order dated 08.08.2019.

6. The matter was thereafter listed on 07.06.2024, where the case of the petitioner was enlisted at sl. No. 15 and the name of the learned counsel was listed as "Mr. P. Borah" instead of "Ms. P. Borah". Accordingly, once again the petitioner remains unrepresented when the matter was called on 07.06.2024. To support the contention the petitioner has annexed the copy of cause list dated 07.06.2024 and the copy of order dated 07.06.2024.

7. Thereafter, the writ petition was listed on 12.06.2024, where the case of the petitioner was enlisted at sl. No. 11 and the name of the learned counsel was listed as "Mr. P. Borah" instead of "Ms. P. Borah". Accordingly, once again the petitioner remains unrepresented when the matter was called on 12.06.2024. To support the contention the petitioner has annexed the copy of cause list dated 12.06.2024 and the copy of order dated 12.06.2024.

8. Accordingly, the Court is inclined to hold that the petitioner has been able to show that there was just and sufficient cause for the petitioner remaining unrepresented when the matter was previously listed on 08.08.2019, 07.06.2024 and 12.06.2024.

9. Resultantly, the Court is inclined to recall the order dated 12.06.2024 passed by this Court in WP(C) 5442/2017 and the writ petition stands restored to file.

10. As a consequence of restoration of the writ petition to file, the interim bail granted to the petitioner by order dated 06.09.2017, passed in WP(C) 5442/2017 also stands restored.

11. Accordingly, it is provided that the petitioner, namely, Md. Badsha Ali @ Badsha Miah @ Badsha Miya shall not be taken into custody and deported out of India during the pendency of the connected writ petition, i.e. WP(C) 5442/2017.

12. Accordingly, this misc. case stands allowed.

JUDGE

JUDGE

Comparing Assistant