

GAHC010170422024



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

Case No. : Crl.Pet./1031/2024

UTPAL NEOG
S/O HARIMOHAN NEOG
R/O VILL- KEKURABARI
COLLEGE TINIALI, P.O. KALABARI, P.S. GOHPUR,
DIST. BISWANATH, ASSAM
PIN-784178

VERSUS

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

2:SRI JOGESHWAR SAIKIA
S/OLT. DANDI SAIKIA
R/O RAIYABAKALA GAON

P.O. AND P.S. PANIGAON

DIST. LAKHIMPUR
ASSAM
PIN-78705

Advocate for the Petitioner : MR. D BORAH, MS P SINGH

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

22.08.2024

1. Heard learned counsel Mr. D. Borah for the petitioner Utpal Neog.
2. This application has been filed by the petitioner under Section 528 of the BNSS, 2023 challenging the orders dated 11.06.2024 and 08.08.2024 in passed by the learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur in connection with Panigaon P.S. Case No. 47/2016 registered under section 366(A) of the IPC corresponding to G.R. Case No. 1062/2016.
3. Heard Mr. M. P. Goswami, learned Additional Public Prosecutor, Assam for respondent No. 1.
4. Learned Additional Public Prosecutor has accepted notice on behalf of respondent No. 1 and thus no formal notice is required to be issued.
5. I have considered the submissions at the Bar.
6. It is submitted on behalf of the petitioner that vide order dated 10.04.2018 in connection with Crl.Pet. No. 315/2018, the above mentioned G.R. Case was stayed by this Court. The petitioner was under the belief that he did not have to appear before the learned Trial Court as proceedings were stayed. Thereafter, several orders were passed by the learned SDJM as this case was pending

before the learned SDJM at that point of time. Acknowledging the order of stay issued by this Court, on 15.07.2019, as the learned SDJM was on leave, an order was erroneously passed to issue NBWA against the petitioner. The order of issuance of NBWA thus continued. During Covid, the petitioner could not appear before the Court and finally this case was transferred to the Court of learned CJM and vide impugned order dated 11.06.2024, a fresh NBWA was issued against the petitioner directing the O/C of the concerned P.S. to execute the warrant. The petitioner is willing to co-operate with the trial. The petitioner was not negligent and he did not willingly disobey the order of the Court. The petitioner has prayed for setting aside the impugned order so that he could appear before the Trial court and co-operate with the trial. At present, the petitioner is apprehending arrest as NBWA has been issued against him.

7. Learned Additional Public Prosecutor has submitted that the petitioner's conduct reflects that he was not co-operating with the proceeding.

8. I have taken a pragmatic view. This is already a long pending case which is not required to be protracted any further.

9. The petitioner is directed to appear before the learned CJM within 20 days and co-operate with the trial. Till then, no coercive action to be taken against

the petitioner and the NBWA issued against the petitioner is kept in abeyance till the appearance of the petitioner before the learned CJM.

10. In terms of the above observations, petition stands disposed of.

JUDGE

Comparing Assistant