

GAHC010235032024



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

Case No. : Crl.Pet./1346/2024

SALAMAN DEWAN @ MD. SULEMAN DEWAN
S/O IBRAHIM DEWAN
VILL- CHANDANPUR KAKADOWA
P.S. TARABARI
DIST. BARPETA, ASSAM

VERSUS

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

2:DEEPAK THAKURIA
S/O LATE SURJYA KANTA THAKURIA
ASSTT. SUB-INSPECTOR OF POLICE BASISTHA POLICE STATION TRAFFIC
BRANCH

DIST. KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. R ALI, MR H A AHMED

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

12.11.2024

1. Heard Mr. R. Ali, learned counsel for the petitioner. Also heard Mr. K. K. Das, learned Additional Public Prosecutor for the State.
2. The present application is filed under Section 528 read with Section 438/442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 assailing the orders dated 23.04.2021, 21.07.2023 and 20.09.2024 passed by the learned Chief Judicial Magistrate, Kamrup (M) in PRC Case No. 100/2018, whereby the NBWA and Proclamation and Attachment against the petitioner was issued fixing the case on 26.11.2024 for appearance.
3. The petitioner is accused in PRC Case No. 100/2018 under Section 304-A/279 of IPC pending for trial before the learned Chief Judicial Magistrate, Kamrup (M).
4. It is seen from the FIR that the petitioner was the driver of the offending truck. It is also on record that the petitioner entered appearance after receipt of summons before the trial Court and also participated for few days in the proceeding and was allowed to go on bail by the learned trial Court below. However, subsequently, the petitioner was absent without steps and therefore, initially NBWA was issued and subsequently, proclamation was issued.
5. Mr. Ali, learned counsel for the petitioner submits that the petitioner is a truck driver and is to travel to different places and accordingly, the owner of the vehicle assured him that proper steps will be taken by the owner in the case in hand and on such assurance, the petitioner was absent being unaware of the consequences.

6. It is further submitted by Mr. Ali, learned counsel for the petitioner that hereinafter, he will appear before the learned trial Court below on regular basis and will not remain absent without any appropriate steps and therefore, he may be allowed to take defence.
7. Mr. Ali, learned counsel for the petitioner further contends that the petitioner has no intention to willfully avoid the trial inasmuch as he had entered appearance and was allowed to go on bail. However, due to misunderstanding of facts as well as the law, he did not appear before the learned trial Court below.
8. Mr. Das, learned Additional Public Prosecutor for the State in his usual fairness submits that if the petitioner assures that he will continue to participate in the trial and shall not avoid the proceeding, then, this Court may allow him to appear before the learned Court below.
9. Considering the nature of allegation as well as the conduct of the petitioner that initially he entered appearance before the learned trial Court below after receipt of summons and continued to participate for few days in the trial, this Court is of the view that this Court should exercise its power under Section 528 of BNSS permitting the petitioner to appear before the learned trial Court and seek a bail. Ordered accordingly.
10. Accordingly, the present petition is disposed of with a direction to the petitioner to appear before the learned trial Court on or before 26.11.2024, and file appropriate application as indicated hereinabove.
11. It is further provided that till such period, the NBWA issued on 23.04.2021 and subsequent orders hereinabove shall not be executed.
12. While parting with the record, it is clarified that this court has not commented on merit of explanation given and the learned trial court shall apply its own mind

in deciding any application pursuant to this order and shall not be influenced by any observation made in the case by this court.

13. With the aforesaid observations, the criminal petition stands disposed of.

JUDGE

Comparing Assistant