

GAHC010241382024



2024:GAU-AS:12897

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

Case No. : Crl.Pet./1411/2024

JIABUR RAHMAN
S/O LATE HARIS ALI
R/O VILL- PACCHIM BAGURI
P.S HOJAI,
DIST. HOJAI, ASSAM

VERSUS

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

2:SALEHA BEGUM
W/O LATE HARIS ALI
R/O VILL- PACCHIM BAGURI
P.S. HOJAI
DIST. HOJAI
ASSA

Advocate for the Petitioner : MD. A J ATIA, MS J MARIYAM,MS A H ATIA

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 18.12.2024

Heard Mr. A. J. Atia, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State respondent No. 1.

This is an application under Section 528 *read with* Section 438 *read with* Section 442 of BNSS challenging the legality and validity of order dated 28.10.2024, passed by the learned SDJM (M), Hojai, Sankardev Nagar in PRC Case No. 320/2023, registered under Sections 120B/302/34 IPC, as well as the other subsequent orders, whereby the NBWAs were issued against the present accused/petitioner without following the proper procedure of law.

It is submitted by Mr. Atia, learned counsel for the petitioner, that the present accused/petitioner never received any summon properly from the Court, but without service of summon to the present accused/petitioner, the learned Trial Court below had issued the warrant of arrest on 28.10.2024 and also on other subsequent dates. However, the present accused/ petitioner is ready and willing to appear before the learned Trial Court below and will face the trial if he is provided with some interim protection.

In this context, Mr. Baruah, learned Additional Public Prosecutor, submitted that from the order sheets annexed by the present petitioner, it is seen that the summon was served on the present petitioner and on his behalf, a petition was filed by his engaged counsel which was allowed and admittedly the NBWA was

issued only on 28.10.2024 by the learned Trial Court below. Accordingly, he submitted that the present accused/petitioner may be given one more chance to appear before the learned Trial Court below with an appropriate application for bail which may be considered in accordance with law.

After hearing the submissions made by the learned counsels for both sides, it is seen that though the petitioner had taken the plea that he never received any summon, but from the order sheets, it is seen that on many occasion the petition was filed on behalf of the petitioner which were already allowed by the learned Trial Court below. However, on 28.10.2024, considering the absence of the present petitioner, the warrant was issued against him.

Considering all circumstances of this case, this Court is of the opinion that the present petitioner may be given one more chance to appear before the learned Trial Court below. Accordingly, I hereby direct the present petitioner to appear before the learned Trial Court below within 15 (fifteen) days from the date of this order with an appropriate application for bail and upon filing of such petition, the learned Court below shall consider the same in accordance with law. And, till then, the execution of NBWA, issued against the present petitioner, shall remain stayed/suspended.

With the observation and direction, this criminal petition stands disposed of.

JUDGE

Comparing Assistant