

GAHC010245222024



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

Case No. : Crl.Pet./1432/2024

SURESH KUMER KASHLIWAL
S/O LATE DEEP CHAND KASHLIWAL
DIRECTOR OF OTTIS ASSOCIATES PRIVATE LIMITED,
R/O PATNISADAN, GROUND FLOOR, OPPOSITE OF KALITA BHAWAN,
ROOPNAGAR, KUMARPARA, P.O. AND P.S. BHARALUMUKH, GUWAHATI-
781009, ASSAM

VERSUS

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

2:KHAGENDRA NATH DAS
S/O LATE SRIKANTA DAS
PERMANENT RESIDENT OF VILL AND P.O. KUROBAHA
P.S. PATACHARKUCHI
DIST. BAJALI
ASSAM
PIN-78135

Advocate for the Petitioner : MS. S KANUNGOE, C V INTONG

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 27-11-2024

Heard Mrs. S. Kanungoe, learned counsel for the petitioner. Also heard Mr. D.P. Goswami, learned Additional Public Prosecutor for the State respondent.

This is a petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 against the order dated 09.07.2024 whereby, NBWA was issued and the subsequent orders dated 06.08.2024, 10.09.2024, 29.10.2024, whereby NBWA issued against the present petitioner in N.I. Act Case No.103/2021 pending before the learned Judicial Magistrate First Class, Barpeta, Assam.

It is submitted by the learned counsel for the petitioner that the accused petitioner was regularly appearing before the learned trial Court below. However, on some dates, he could not personally appear before the learned trial Court Below as he was out of station and on his behalf a petition was also filed. But on 09.07.2024 the petition filed on his behalf was rejected by the learned Court Below and NBWA was issued against him and the other subsequent dates. She further submits that the accused petitioner is ready and willing to appear before the learned Court Below and contest the case if one more chance is given to the accused petitioner. Accordingly, learned counsel for the petitioner submits that NBWA issued against the petitioner may be suspended giving him chance to appear before the learned Trial Court Below and to contest the case.

Learned Additional Public Prosecutor has submitted in this regard that the petitioner may be given one more chance to appear before the learned Court Below with an appropriate application for bail, which may be considered in accordance with law.

After hearing the submission made by the learned counsel for both sides and the case record, it is seen that the accused petitioner remained absent in 4/5 consecutive dates, when the case was at the stage of DW. Accordingly, considering the submissions made by the complainant, the learned trial Court below had to reject the petition filed on his behalf vide order dated 09.07.2024 considering the fact that the case was pending since long at the stage of DW. Thus, no irregularity and illegality is found in the order passed by the trial Court below issuing NBWA against the present petitioner on 09.07.2024 and the subsequent dates.

However, for the ends of justice, considering the submission made by the learned counsel or the petitioner, this Court is of the opinion that one more chance may be given to the petitioner to appear before the Trial Court below on **28.11.2024** which is the date fixed by the trial Court and till then, the execution of NBWA issued against the petitioner may be stayed/suspended.

The petitions stands allowed at the motion stage.

JUDGE

Comparing Assistant