

GAHC010256972024



2024:GAU-AS:12380

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

Case No. : Crl.Pet./1489/2024

SRIVASTAV MADHAV MADHVAN
S/O LATE ARUN KUMAR SRIVSTAVA,
R/O B-306, VEENAVIHAR, ADARSH VIHAR COLONY, RUKANPURA, PATNA,
BIHAR, PIN- 800014

VERSUS

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

2:SMT. GOURI DAS
W/O LATE SOUMEN DAS
R/O SHANTI BHAWAN

4TH FLOOR
EAST MANIPURI BASTI ROAD
PALTAN BAZAR
P.S. PALTAN BAZAR
GUWAHATI-781007

Advocate for the Petitioner : MR T H HAZARIKA, MS. S YASMIN,MR. K ISLAM,MR A RASHID,MR. M SHARMA,MR M CHETIA

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

06.12.2024

Heard Mr. T. H. Hazarika, learned counsel for the petitioner. Also heard Ms. S. H. Borah, learned Additional Public Prosecutor for the State respondent.

This application is filed under Section 528 of the BNSS, read with Sections 438/442 of the Bharatiya Nagarik Suraksha Sanhita, 2023, praying for setting aside the order dated 01.09.2023 and its subsequent orders, including 21.10.2024, whereby the NBWA was issued against the petitioner by the learned Judicial Magistrate First Class, Kamrup (M), Guwahati, in C.R. Case No. 2046/2018, and for the release of the petitioner on bail.

It is submitted by the learned counsel for the petitioner, Mr. Hazarika, that the present petitioner appeared before the learned Trial court on 13.11.2019 upon receipt of the summons, and he was granted regular bail. The case was then fixed on 27.01.2020 for copy. Thereafter, he was transferred from Guwahati to Patna on 30.08.2020. Subsequently, on consecutive dates, the matter was fixed, but due to the outbreak of COVID-19, neither the parties nor the engaged counsels could appear in court. The matter was then fixed on 01.09.2023 for appearance/report, but on that date, the complainant/respondent No. 2 was absent with step, and the present petitioner was also absent without step, for which the Trial Court issued a Non-Bailable Warrant (NBWA) against the petitioner. Thus, it is submitted that the NBWA was issued without the execution of the Bailable Warrant (BWA). Thereafter, the case was fixed on 19.12.2023, 12.04.2024, 29.07.2024, and 21.10.2024 for the appearance of the petitioner, and on all those dates, an NBWA was issued against the petitioner. On 21.10.2024, the Trial Court issued a warrant against the petitioner at his new office address at Canara Bank, Patna, since the petitioner was currently posted at that

branch, and the case was fixed on 27.01.2025 for his appearance. Accordingly, he submits that the petitioner is still ready and willing to appear before the learned trial court on each and every date fixed, provided the orders for the issuance of the warrant is suspended.

In this context, the learned Additional Public Prosecutor, Ms. Borah, has submitted that the NBWA was issued against the accused/petitioner on 01.09.2023 and on subsequent dates. She further submits that no irregularity has been committed by the learned Trial Court in issuing the NBWA. Hence, considering the conduct of the petitioner, it is requested that he may be directed to appear before the trial court and seek regular bail if he is willing to contest the case.

Considering the submissions made by the learned counsels for both sides and also considering the conduct of the accused/petitioner, I hereby direct the petitioner to appear before the Court of learned Trial Court within 15 (fifteen) days from today and to file a fresh petition for regular bail and upon filing of such petition, the learned Court below shall consider and dispose of the same in accordance with law. And, till then, the execution of NBWA, if any, issued against the petitioner, stands stayed/suspended.

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

JUDGE

Comparing Assistant