

GAHC010259012024



2024:GAU-AS:12381

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

Case No. : Crl.Pet./1492/2024

MITHUN BAISHYA @ TUTUMONI BAISHYA
S/O LATE JOY BAISHYA
R/O VILL- JHILPAR, DIPHU, P.O.AND P.S. DIPHU
IN THE DISTRICT OF KARBI ANGLONG, ASSAM, PIN-782460.

VERSUS

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

2:SRI BODIN GOYARI
S/O SRI ROBIN GOYARI
R/O DEWAN BOSTI
DIPHU
P.O. AND P.S. DIPHU
IN THE DISTRICT OF KARBI ANGLONG
ASSAM
PIN-78246

Advocate for the Petitioner : MR. A PHUKAN, MR. N M DAS,MR. J HATIMURIA

Advocate for the Respondent : PP, ASSAM,

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

06.12.2024

Heard Mr. A. Phukan, 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 Bharatiya Nagarik Suraksha Sanhita, 2023 challenging the impugned Order dated 13.06.2023 and subsequent orders till 18.11.2024 passed by the learned Judicial Magistrate First Class, Karbi Anglong, Diphu, whereby, the NBWA and Proclamation were issued against the petitioner in connection with the PRC Case No.213/2022.

It is submitted by the learned counsel for the petitioner, Mr. Phukan, that the petitioner was not aware of the pendency of the case, as he has been working in Mumbai as a security guard since 2020. In this regard, a certificate has also been issued by the company where he was employed. However, when he returned to his native place, he came to know that the case was pending and that a warrant had been issued against him. Subsequently, he obtained the certified copy of the case file and discovered that he had already been declared an absconder. On subsequent dates, i.e., 13.05.2024 and 24.06.2024, the trial court again issued fresh proclamations against the petitioner, and the case was fixed for 31.07.2024.

He further submits that there was no negligence on the part of the petitioner, as he was unaware of the pendency of the case, and the police never attempted to search for him from the date of filing the First Information Report (FIR). Thus, he could not appear before the learned Trial Court due to his lack of knowledge regarding the case's status. He further submits that the petitioner is still ready and willing to appear before the learned Trial Court on each and every date fixed, provided the order for the issuance of NBWA and proclamation is suspended.

In this context, the learned Additional Public Prosecutor, Ms. Borah, has submitted that the accused/petitioner was shown as an absconder because he could not be apprehended during the investigation. After several efforts by the court to procure his attendance, the proclamation as well as NBWA was issued, declaring the petitioner as an absconder. Hence, considering the conduct of the petitioner, she submitted that the petitioner may be directed to appear before the Trial Court, but no interim relief should be granted to the accused/petitioner at this stage.

After hearing the submissions made by the learned counsels for both sides and considering the conduct of the accused/petitioner, as well as the endeavor made by the learned Trial Court, this court is of the opinion that no relief can be granted to the accused/petitioner. However, he is directed to appear before the learned Trial Court to contest the case and may file a fresh petition for regular bail. Upon the filing of such a petition, the learned court below shall consider and dispose of the same in accordance with the law.

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

JUDGE

Comparing Assistant