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

Case No. : I.A.(Crl.)/1019/2026
in
Crl.Pet./1018/2026

SMTI DHARITRI DAS
WIFE OF SRI CHATRADHAR DAS
RESIDENT OF VILLAGE-BADANKUCHI
SADERI UNDER PATHSALA POLICE STATION IN THE DISTRICT OF BAJALI
ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE PP
ASSAM

2:SMTI SANJITA DAS BAYAN
WIFE OF DR. ANURUDDHA BAYAN
RESIDENT OF G.C. LANE
GALIYAHATI NO.1 UNDER BARPETA POLICEN IN DIST BARPETA ASSAM

Advocate for : MR. B M CHOUDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE

HON'BLE MRS. JUSTICE MITALI THAKURIA

ORDER

09-10-2026

Heard Mr. B. M. Choudhury, learned counsel for the applicant/petitioner and Ms. S. H. Borah, learned Additional Public Prosecutor, Assam for the opposite party No.1. Also heard Mr. S. Nawaz, learned counsel for the opposite party No.2.

2. This interlocutory application has been filed for setting aside the Appellate Court's order dated 16.07.2026 vacating the suspension of sentence and staying the appeal's hearing until payment of interim compensation amount by the appellant, i.e., 20% of the fine awarded under Section 148 of the NI Act and consequential issuance of NBWA by the Court learned Magistrate vide impugned order dated 21.07.2026 and all other subsequent orders passed thereafter.

3. It is submitted by Mr. Choudhury, learned counsel for the applicant/petitioner that by the order dated 16.05.2026, passed by the Appellate Court in Crl. Appeal No. 36/2026 had directed the appellant to pay 20% of the awarded compensation under Section 148 of the NI Act. Thereafter, the petitioner filed an application for exempting her from payment of 20% of the compensation amount which amounted to Rs.11,26,000/- for her financial constraint. But vide order dated 12.06.2026 after hearing both the parties, the learned Appellate Court had rejected the prayer for exemption with the observation that the prayer for exemption is absolutely unsatisfactory and there is no merit in the exemption prayer and accordingly, same was rejected. Further it was directed that in the event of failure to deposit the compensation amount within the stipulated period, the stay order granted in operation of the

impugned judgment and order would be vacated.

4. But the petitioner could not make any payment of 20% of the awarded compensation as per direction of the learned Appellate Court and for which vide its order dated 16.07.2026, the stay order granted in operation of the impugned judgment dated 23.04.2026 passed by the learned JMFC, Barpeta in N.I. Case No. 319/2024 was vacated and the TCR has been returned to the learned Trial Court with a copy of the said order. Apart from that the learned Appellate Court had further stayed the further proceeding of the appeal until the payment of the interim compensation amount by the petitioner.

5. He further submitted that after return the TCR to the learned Trial Court, the NBWA has already been issued against the petitioner.

6. Mr. Choudhury, learned counsel further submitted that the petitioner being a lady with two minor daughters is presently not in a position to make any payment of 20% of the awarded compensation, however, she is trying her best to make payment, if some time is granted to her.

7. Mr. Choudhury, learned counsel further submitted that this is a statutory appeal wherein, the petitioner has the right for hearing of the appeal, but without considering this aspect of the case, the learned Appellate Court vide order dated 16.07.2026 had also stayed the entire appeal proceeding till the payment of interim compensation, which is not proper and illegal in the eye of law.

8. Accordingly, it is submitted by Mr. Choudhury, learned counsel that through the instant interlocutory application, it is prayed for setting aside the order dated 16.07.2026 and for a direction to proceed with the appeal and also prayed for recalling the NBWA at this stage giving some time for payment of 20% of

the awarded compensation as directed by the learned Appellate Court.

9. Mr. Nawaz, learned counsel appearing for the opposite party No.2 submitted in this regard that till date there is no payment of 20% of the awarded compensation as directed by the learned Appellate Court, however, Mr. Nawaz, learned counsel admitted that it is a first appeal where the petitioner has the statutory right for preferring an appeal against the order of the learned Magistrate. He also submitted that the respondent side is also suffering for stay of the hearing of the appeal, which is pending before the Appellate Court at this stage.

10. Considering the entire facts and circumstances of the case, it is seen that the prayer was made for exemption of the payment of 20% of the awarded compensation passed by the learned Appellate Court under Section 148 NI Act, which was rejected by the learned Appellate Court considering that the prayer made by the petitioner for exemption is not reasonable and satisfactory. But, without going into the other detail of the merit of the case under the Crl. Pet. No. 1018/2026, it is the opinion of the Court that being a statutory appeal, the learned Appellate Court cannot stay the proceeding of the appeal with a condition for payment of the interim compensation. However, stay in the operation of the impugned judgment and order may be subject to the payment of 20% awarded compensation under the provision of 148 of the NI Act.

11. Further considering the entire facts and circumstances of the case and also considering the submission made by Mr. Choudhury, learned counsel for the applicant/petitioner, this Court is of the opinion that some time may be given to the petitioner for making the payment of 20% of the awarded compensation and in the meantime, the NBWA issued against the applicant/petitioner may be recalled at this stage.

12. Further, the order of stay of the hearing of the appeal being Crl. Appeal No. 36/2026 is hereby set aside and quashed directing the Appellate Court to proceed with the hearing of the criminal appeal. In the meantime, the petitioner is at liberty to make payment of 20% of the awarded compensation during the pendency of the connected Crl. Pet. 1018/2026. The hearing of the Crl. Pet. No. 1018/2026, wherein the order of rejection of the prayer for exemption is under challenge, will be heard in due course.

13. Further, the NBWA issued against the applicant/petitioner by the learned JMFC, Barpeta vide its order dated 21.07.2026 and all other subsequent order passed thereafter is hereby stayed/suspended and both the parties are hereby directed to appear before the learned Appellate Court and to proceed with the hearing of the appeal.

14. The learned Appellate Court is also directed to dispose of the appeal within a reasonable period, preferably within a period of 2/3 months from the date of passing of this order.

15. Both the parties herein are directed to appear before the learned Appellate Court on **03.11.2026.**

16. Wit the above observation and direction, this interlocutory application stands disposed of.

JUDGE

Comparing Assistant