GAHC010063122022



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

Case No.: Crl.Pet./290/2022

MD. DADUL ALI S/O KAYAFAL ALI R/O BHASKAR NAGAR, NEAR LP SCHOOL, HOUSE NO. 16, BYE LANE NO. 3, BAMUNIMAIDAM, P.S. NOONMATI, P.O. SILPUKHURI, DIST KAMRUP (METRO), GUWAHATI, PIN-781003, ASSAM, C/O RAJ PHARMACY, ZOO ROAD TINIALI, NEAR J.C. HAT, P.S. GEETANAGAR, DIST. KAMRUP (METRO), ASSAM

VERSUS

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

2:SRI HARI PRASAD SHARMA S/O LATE CHIRANJI LAL SHARMA R/O GODAVARI NIWAS

H.B. ROAD FANCY BAZAR NEAR SHANI MANDIR P.S. FANCY BAZAR (O.P.) DIST. KAMRUP (METRO) ASSA

Advocate for the Petitioner : MR. B PHUKAN **Advocate for the Respondent** : PP, ASSAM

BEFORE HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

04.04.2022

Heard Mr. P Phukan, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor, Assam appearing for the State respondent No. 1.

By this petition under Section 482 Cr.P.C., the petitioner has prayed for quashing of the impugned order dated 24.02.2020 and the subsequent orders issuing NBWA against the petitioner, passed by the learned SDJM-II, Kamrup (M), Guwahati, in connection with CR Case No. 2936^C/2015.

Mr. P. Phukan, learned counsel for the petitioner submits that the petitioner, who has been arrayed as an accused in CR Case No. 2936^C/2015, under Section 138 of the NI Act, was allowed to go on bail on appearance in the said case. It has been submitted that the petitioner has been suffering from low back pain with stiffness and neuropathy following a fall on the ground and accordingly he has been advised by the doctor to take rest. Consequently, the petitioner could not appear before the court below on 24.02.2022 and the learned court issued NBWA against the petitioner.

Mr. P. Phukan, learned counsel for the petitioner, therefore, submits that an opportunity may be given to the petitioner for his appearance before the learned Court below and till his appearance, the execution of the NBWA issued against him may be directed to be kept in abeyance.

Mr. P. Borthakur, learned Additional Public Prosecutor, submits that in the backdrop of facts stated above, the petitioner may be directed to appear before the learned Court below on a specified date, subject to conditions to be imposed.

Be it mentioned here that within the ambit and scope of the power vested on this Court, under Section 482 Cr.P.C., the NBWA issued by the learned Court below cannot be recalled. However, having considered the above submissions made by the learned counsel for both sides and on consideration of the averments made in the petition supported by documents annexed thereto, it is provided that the petitioner shall appear before the Court of learned Sub-Divisional Judicial Magistrate No.II, Kamrup (M), Guwahati, **within 10(ten) days** from today and till his appearance in the court below, the execution of the NBWA issued against him shall remain in **abeyance**.

With the above directions, the petition stands disposed of.

JUDGE

Comparing Assistant