

GAHC010034892024



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

Case No. : Tr.P.(Crl.)/10/2024

SAHNUR ALI
S/O LATE SADULLAH SHEIKH
R/O SHANITPUR (NEAR MASJID), MANGALDAI TOWN, WARD NO. 2,
P.O. AND P.S. MANGALDAI,
DIST. DARRANG, ASSAM-784125

VERSUS

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

2:GAUTAM MAJUMDAR
S/OLATE GAJENDRA CHANDRA MAJUMDAR
R/O VILL- DAKHIN NALBARI
P.O. AND P.S. TANGLA
DIST. UDALGURI
BTR
ASSA

Advocate for the Petitioner : MS. M DEV

Advocate for the Respondent : PP, ASSAM

Linked Case : Tr.P.(Crl.)/9/2024

SAHNUR ALI
S/O LATE SADULLAH SHEIKH
R/O SHANTIPUR (NEAR MASJID)
MANGALDAI TOWN
WARD NO. 2
P.O. AND P.S. MANGALDAI
DIST. DARRANG
ASSAM-784125

VERSUS

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

2:GAUTAM MAJUMDAR
S/O LATE GAJENDRA CHANDRA MAJUMDAR
R/O VILL- DAKHIN NALBARI
P.O. AND P.S. TANGLA
DIST. UDALGURI
BTR
ASSAM

Advocate for : MS. M DEV
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR

Linked Case : Tr.P.(CrI.)/11/2024

SAHNUR ALI
S/O LATE SADULLAH SHEIKH R/O SHANITPUR (NEAR MASJID)
MANGALDAI TOWN
WARD NO. 2
P.O. AND P.S. MANGALDAI
DIST. DARRANG
ASSAM-784125

VERSUS

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

2:GAUTAM MAJUMDAR
S/OLATE GAJENDRA CHANDRA MAJUMDAR
R/O VILL- DAKHIN NALBARI P.O. AND P.S. TANGLA
DIST. UDALGURI
BTR
ASSAM

Advocate for : MS. M DEV
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR

Linked Case : Tr.P.(CrI.)/8/2024

SAHNUR ALI

S/O LATE SADULLAH SHEIKH
RESIDENT OF SHANTIPUR (NEAR MASJID) MANGALDAI TOWN
WARD NO. 2
PO AND PS MANGALDAI
DIST DARRANG
ASSAM 784125

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY PP ASSAM

2:NITAI DEY
S/O HAREN CHANDRA DEY
RESIDENT OF TANGLA TOWN
HOSPITAL ROAD
PO AND PS TANGLA
DIST UDALGURI
BTR
ASSAM

Advocate for : MS. M DEV

Advocate for : PP

ASSAM appearing for THE STATE OF ASSAM AND ANR

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 28.05.2024

As agreed to by the learned counsel for the parties, these matters are taken up together.

Though notice has been served, but none appears for the respondent in Tr.P(CrI) 8/2024. The learned counsel for the respondent No.2 except in Tr.P(CrI) 8/2024, submits that as certain factual assertions are made in the present petitions, he would like to respond to such statement inasmuch as the allegation of giving threat by the petitioner has been made.

Prayer is allowed.

List this matter on 12.06.2024.

The issue involves transfer of four NI Act Cases being NI Case No. No.02/2022, NI Act Case No.16/2022, NI Act Case No.03/2022, & NI Act Case No.05/2021 under section 138 of NI Act filed by the respondent No.2 from the court of learned CJM, Udalguri, BTR either to the court of learned CJM, Darrang Mangaldai or to the court of learned CJM, Kamrup (M).

It is provided that until further orders from this court, the proceedings under the NI Act Case No. No.02/2022, NI Act Case No.16/2022, NI Act Case No.03/2022, & NI Act Case No.05/2021 shall remain suspended.

List accordingly.

This court while issuing notice of motion under its order dated 22.02.2024 passed the following interim order:

“Considering the submissions of the learned counsels of both sides, further proceeding of the NI Act Case No.02/2022 registered under section 138 of NI Act, 1881 pending before the court of learned CJM, Udalguri, BTR to the court of learned CJM, Darrang, Mangaldai or Kamrup (M), stands stayed till next returnable date.”

This court is disturbed to peruse the order dated 13.05.2024 passed by the learned Magistrate in NI Case No.02/2022.

When such order was placed before the learned Magistrate, the learned Magistrate proceeded with the case ignoring such interim order. The reasons cited by the learned Magistrate is quoted herein above:

“However, it is to be noted that the said order of stay by

the hon'ble High Court dated 22.02.2024 was not done by virtue of a speaking order."

The Magistrate in the order further went to record the following:

"Clearly the further proceeding of this case was stayed by the hon'ble Gauhati High Court by using the expression "stayed till the next returnable date" with the direction to issue notice to the respondent returnable within 3 weeks.

Since the stay order of the Hon'ble Gauhati High Court was not a conclusive stay order or by virtue of a speaking order, therefore the direction of stay in the proceeding is not in force after expiry of 3 weeks from the order."

Such conduct, prima facie amounts to this court to a case of gross judicial indiscipline. It also appears to be gross insubordination by the Magistrate.

In the aforesaid backdrop, let the aforesaid order be brought to the notice of the Registrar General, Gauhati High court so that the matter can be taken up in the administrative side.

A copy of the order be furnished to the Registrar General, Gauhati High Court as well as to the Registrar Vigilance, Gauhati High Court.

JUDGE