

GAHC040003732025



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

Case No. : Crl.Petn./46/2025

Riddam Kato
Son of Shri Duken Kato, resident of Sipu Colony, Aalo, West Siang District,
Arunachal Pradesh.

VERSUS

The State of AP and 7 Ors
represented by the PP of AP 2:Karsen Lollen
Age: 0
Occupation :
Son of Shri Mokar Lollen
Dego Village
PO and PS Aalo
West Siang District
Arunachal Pradesh.

3:Doli Kami
Age: 0
Occupation :
Son of Shri Pagdo Kami
Panya Village
PO and PS Aalo
West Siang District
Arunachal Pradesh.

4:Mige Ngomdir
Age: 0
Occupation :
Son of Shri Lime Ngomdir
Beye Village
PO and PS Aalo
West Siang District
Arunachal Pradesh.

5:Kenli Lollen

Age: 0

Occupation :

Son of Late Geken Lollen

resident of Bile Village

PO and PS Aalo

West Siang District

Arunachal Pradesh.

6:Jomgum Ete

Age: 0

Occupation :

Son of Shri Tumlar Ete

Kuge Pomte Village

PO and PS Aalo

West Siang District

Arunachal Pradesh.

7:Dugnya Ado

Age: 0

Occupation :

Son of Shri Binduk Ado

Kombi Jirdin Village

PO and PS Aalo

West Siang District

Arunachal Pradesh.

8:Mimar Doji

Age: 0

Occupation :

Son of Shri Kemni Doje

Doji Jelly Village

PO and PS Aalo

West Siang District

Arunachal Pradesh

Advocate for the Petitioner : Lissing Perme, T Tagam,Signal Yirang,Wintet Sawin,Tabung
Nonang,A Perme,Krishna Dubey

Advocate for the Respondent : P P of AP,

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

12.03.2025

Heard Mr. L. Perme, learned Counsel for the petitioner. Also heard Mr. G. Tado, learned Additional Public Prosecutor for the State respondent No.1.

2. This application is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, praying for the quashing of the charge-sheet, vide C.S. No. 71/2023 dated 23.12.2023, under Section 447 of the IPC *read with* Section 3 of the PDPP Act, arising out of Aalo P.S. FIR No. 49/2023 dated 30.08.2023, against the petitioner, which is pending for cognizance before the learned Chief Judicial Magistrate, Aalo.

3. Issue notice to the respondents, returnable within 3(three) weeks.

4. Since Mr. Tado, learned Additional Public Prosecutor, has entered appearance and accepted notice on behalf of the respondent No. 1, no formal notice is required to be issued to the said respondent. However, he shall be provided with requisite extra-copy of the petition, if not already served, during the course of the day.

5. The learned counsel for the petitioner shall take steps for service of notice upon respondent Nos. 2 to 8 by registered post with A/D as well as usual process within seven days from today.

6. It is submitted by Mr. Perme, learned counsel for the petitioner, that from the plain reading of the FIR itself, it is evident that it is a counter-FIR against

the FIR filed by the present petitioner. He further submitted that the case is registered under Section 447 of the IPC *read with* Section 3 of the PDPP Act, 1984, which is not applicable to the petitioner. He also submitted that from the charge-sheet and the inspection report submitted by the concerned authority, it is clear that, after the direction of the concerned authority, the petitioner had already repaired the retaining wall near Govt. Quarter No. G-18.

7. He further submits that to attract Section 447 of the IPC *read with* Section 3 of the PDPP Act, 1984, the intention is the first ingredient, but in the instant case, it cannot be held that there was any intention to encroach upon government property, the school boundary, or the government quarter. Moreover, as per the allegation, the encroachment was only 50 cm and 80 cm for the boundary, which may have occurred during the construction of the boundary wall, but there was no intention for such encroachment. He further submitted that, vide the Judgment and Order dated 31.01.2025, passed in Criminal Petition No. 12 (AP)/2024, the aforesaid charges leveled against the father of the present petitioner have already been exonerated by this Court. Accordingly, he prays for a stay of the further proceedings of charge-sheet No. 71/2023 dated 23.12.2023, until the disposal of the instant petition.

8. On the other hand, Mr. Tado, learned Additional Public Prosecutor, submitted that from the Judgment and Order dated 31.01.2025, passed in Criminal Petition No. 12 (AP)/2024, wherein this Court had observed in paragraphs 8, 11, and 14, that from the statements made by the witnesses and the documents relied upon by the petitioner, it is seen that the petitioner is incriminated by the other witnesses. There was no such incrimination against the father of the accused/petitioner, and on the basis of this, the earlier petition

was disposed of by quashing the criminal case against the father of the present accused/petitioner. However, from the order passed by this Court, it is evident that there are sufficient incriminating materials against the present petitioner, and it is he who also encroached on the land as alleged in the FIR and the charge-sheet. Thus, he raised objections and submits that the present petition may be dismissed at the motion stage.

9. Considering the submissions made by the learned counsels for both sides, as well as the entire facts and circumstances of the case and the annexures filed along with the petition, the further proceedings of charge-sheet No. 71/2023 dated 23.12.2023, under Section 447 of the IPC *read with* Section 3 of the PDPP Act, arising out of Aalo P.S. FIR No. 49/2023 dated 30.08.2023, shall remain stayed until the next date of listing.

10. Call for the scanned copy of LCR along with the Case Diary.

11. List the matter after **3(three) weeks**.

JUDGE

Comparing Assistant