

GAHC010008292023



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

Case No. : Crl.Pet./44/2023

ABDUR RAHIM AND ANR
S/O LT. MOTASIN ALI
R/O VILL- MADHYAM SAMARALI
P.S. MURAJHAR DIST. HOJAI, ASSAM

2: HASHIR UDDIN
S/O KAMARUDDIN
R/O PACHIM SAMARALI

P.S. MURAJHAR

DIST. HOJAI
ASSA

VERSUS

THE STATE OF ASSAM AND ANR
TO BE REP. BY THE LEARNED PP, ASSAM

2:MD. AZIZUR RAHMAN
S/O ABDUL NOOR
R/O PACHIM SAMARALI
P.S. MURAJHAR

DIST. HOJAI
ASSA

Advocate for the Petitioner : MR SARFRAZ NAWAZ

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

23.08.2023

Heard Mr. S. Nawaz, learned counsel for the petitioners. Also heard Mr. F.K.R. Ahmed, learned counsel for the respondent No.2 and Ms. S.H. Bora, learned Additional Public Prosecutor, Assam, appearing for the State respondent No.1.

2. Correctness or otherwise of the order, dated 25.11.2022, passed by the learned Judicial Magistrate First Class, Hojai, Sankardev Nagar, in PRC Case No.1590/2022 is put to challenge in this petition under Section 482 Cr.P.C., by the petitioners, namely, Abdur Rahim and Hashir Uddin.

3. It is to be noted here that vide impugned order dated 25.11.2022 the learned Court below has taken cognizance against the petitioners and some other accused persons under Section 120B/147/148/149/447/326/506/269/ 307 IPC and issued summon to accused Abdul Noor, Abdul Kadir, Dilwar Hussain, Imdadur Rahman @ Imrajul and also issued non-bailable warrant of arrest against the accused Abdur Rahim and Hashir Uddin, the present applicants.

4. Mr. Nawaz, learned counsel for the petitioners submits that the learned Court below, without complying with the provision of section 82 and 83 Cr.P.C., had directly issued non-bailable warrant of arrest against the petitioners and that the petitioners are ready to face the trial and therefore, it is contended to set aside the impugned order dated 25.11.2022, so far it relates to issuance of non-bailable warrant of arrest against the present petitioners.

5. On the other hand, Mr. F.K.R. Ahmed, learned counsel for the respondent No.2

submits that this Court, vide order dated 23.01.2023 has stayed entire order dated 25.11.2022, for which the learned Court below could not proceed with the case and the trial is being delayed on account of the stay order passed by this Court and therefore, Mr. Ahmed submits that the petitioners may be directed to appear before the learned Court below and to participate in the trial.

6. Ms. S.H. Bora, learned Additional Public Prosecutor, Assam, also subscribes the submission, so advanced by Mr. Ahmed, learned counsel for the respondent No.2.

7. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record received from the learned Court below. And it appears that the learned Court below had issued non-bailable warrant of arrest at the very first instance, without complying with the provision of Section 82 and 83 of the Cr.P.C. The law regarding issuance of non-bailable warrant of arrest is well-settled by Hon'ble Supreme Court in a catena of decisions. Reference in this context can be made to a decision in **Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors.** reported in **(2007)12 SCC 1.**

8. Since the learned Court below had without complying with the provision of Section 82 and 83 of the Cr.P.C. and without following the guidelines issued by the Hon'ble Supreme Court in the case of **Inder Mohan Goswami** (supra), had issued non-bailable warrant of arrest against the petitioners, the order impugned, so far it relates to issuance of NBWA against the petitioners, failed to withstand the legal scrutiny and therefore, this Court is inclined to dispose of this criminal petition at this motion stage itself by directing the petitioners to appear before the learned Court below within a period of 15(fifteen) days from today and to apply for regular bail, and in the event of filing such an application, the learned Court below shall consider the same in accordance with law. The

impugned order, dated 25.11.2022, so far it relates to issuance of non-bailable warrant of arrest against the present petitioners, stands suspended till their appearance before the learned Court below.

Sd/- Robin Phukan
JUDGE

Comparing Assistant