

GAHC010009712023



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

Case No. : Crl.Pet./33/2023

1. RABBUL ALI @ RABBUL ALAMIN AND 2 ORS
S/O ABUL KASHEM
VILL- BAGURIGURI PATHAR
P.S. SORBHOG
P.O. CHUKRUNGBARI
DIST. BARPETA, ASSAM
PIN-781317

2: ANOWAR HUSSAIN
S/O ABUL KASHEM
VILL- BAGURIGURI PATHAR
P.S. SORBHOG
P.O. CHUKRUNGBARI
DIST. BARPETA
ASSAM
PIN-781317

3: BABUL ALI @ BABUL HUSSAIN
S/O ABUL KASHEM
VILL- BAGURIGURI PATHAR
P.S. SORBHOG
P.O. CHUKRUNGBARI
DIST. BARPETA
ASSAM
PIN-78131

VERSUS

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

2: ABUL KALAM AZAD
SON OF AKHLASUR RAHMAN
R/O KHUDNABARI PATHAR

P.S. SORBHOG IN THE DISTRICT OF BARPETA
ASSAM

Advocate for the Petitioner : MR. B HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

20.01.2023.

Heard Mr. AK Hussain, learned counsel for the petitioners. Also heard Mr. BB Gogoi, learned Addl. P.P., Assam appearing for the State respondent.

In this petition under Section 482 of the Code of Criminal Procedure, 1973, three petitioners, namely, Rabbul Ali @ Rabbul Alamin, Anowar Hussain and Babul Ali @ Babul Hussain have challenged the correctness or otherwise of the orders dated 30.11.2022, and 03.01.2023, passed by the learned Special Judge (POCSO), Barpeta, in Special POCSO Case No.144/2022, under Sections 366(A)/34 of the IPC, read with Section 4 of the POCSO Act.

It is to be noted here that vide the aforesaid orders dated 30.11.2022, the learned Court below has issued NBWA against the petitioners, at the very first instance, and vide order dated 03.01.2023, the learned Court below has continued the same.

Mr. AK Hussain, learned counsel for the petitioners submits that in connection with the Sorbhog P.S. Case No.78/2022, under Sections 366(A)/34 of the IPC, read with Section 4 of the POCSO Act, they have been charge sheeted vide Charge Sheet No.105/2022, dated

29.10.2022 and upon the said charge sheet, the petitioners have been shown as absconders and the learned Court below, after taking cognizance upon the said offence, without issuing any notice or other tools to secure appearance of the accused, directly issued the NBWA and that the police has no power to declare the accused persons as absconders and they are ready to participate in the trial and therefore, it is contended to allow this petition.

In support of his submission, Mr. Hussain referred to two case laws of this High Court, in **Kabir Ahmed (Md.) vs. State of Assam**, reported in **2011 (1) GLT 561** and in the case of **Meher Jamal vs. State of Assam and another**, in **Crl. Petition No.393/2015**.

On the other hand, Mr. BB Gogoi, learned Addl. P.P., Assam appearing for the State respondent also submits that the petitioners may be directed to appear before the learned Court below and apply for regular bail and till then, some protection may be extended to them.

Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and documents annexed with the record and also perused the impugned orders dated 30.11.2022 and 03.01.2023, passed by the learned Court below.

It appears that the learned Court below, at the very first instance, on 30.11.2022 issued the NBWA against the petitioners, without using other tools of summons and bailable warrant to secure their attendance. The law regarding issuance of NBWA is well settled by the Hon'ble Supreme Court, in the case of **Inder Mohan Goswami Vs. State of Uttaranchal**, reported in **(2007) 12 SCC 1**.

Having regards to the above and also having regards to the ratio laid down in cases cited above, by the learned counsel for the petitioners, this Court is inclined to dispose of the present petition at the motion stage itself, directing the petitioners to appear before the learned Court below and to apply for regular bail, and directing the learned Court below to consider such petition and dispose of the same, in accordance with the law.

Till then, the NBWA, issued against the petitioners, shall remains stayed.

In terms of above, this Criminal Petition stands disposed of.

JUDGE

Comparing Assistant