

GAHC010035512023



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

Case No. : Crl.Pet./162/2023

MD. RASHIDUL ALI @ BABUL @ RASHIDUL ISLAM
S/O OMAR ALI
R/O VILL- MATANG
P.S. SALBARI,
DIST. BAKSA, ASSAM

VERSUS

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

2:MD. SAHADOT ALI
S/O TUFAJ ALI
R/O BHAKUMARI
P.S. SALBARI

DIST. BAKSA
ASSA

Advocate for the Petitioner : MR. B CHOWDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 22-02-2023

Heard Mr. B. Chowdhury, learned counsel for the petitioner as well as Mr.

Bhaskar Sarma, learned APP for the State respondent.

2. By filing this criminal petition filed under section 482 Cr.P.C. the petitioner has assailed the orders dated 13.05.2022, 02.06.2022 and 05.07.2022 passed by the learned Special Judge (POCSO), Baksa, Mushalpur in Special (POCSO) case no.6/2022. By the said order, the Court had issued NBWA as well as accepted the P&A to be duly promulgated.

3. The learned counsel for the petitioner has submitted that after the bail was granted by order dated 28.04.2021, his bail bond was accepted on 29.04.2021. On 02.02.2022 charge sheet was submitted against the petitioner and accordingly the petitioner was directed to appear on 08.03.2022. But he was absent on 08.03.2022 without steps. However, on 12.04.2022, he was again absent but with steps. Thereafter the petitioner defaulted in appearing before the Court on 13.05.2022. Therefore NBWA was issued against him. It is submitted that as per the ratio laid down in the case of *Satender Kumar Antil vs. Central Bureau Of Investigation, in Special Leave Petition (Crl.) No.5191 Of 2021*, the learned trial court was required to issue aailable warrant of arrest.

4. The learned APP has prayed for interference with the impugned orders.

5. It is noted that in this case the petitioner is accused of committing a heinous offence, so an early trial is required. Therefore, when the petitioner was directed to appear on a certain date, it was his duty to appear on the date fixed i.e. on 13.05.2022, but he was absent without steps. Under such circumstances the Court finds that the learned trial Court had rightly issued NBWA against him.

Therefore, the Court does not find any infirmity in the orders impugned in this application.

6. Be that as it may, as the learned counsel for the petitioner has submitted that the petitioner shall appear before the Court, the Court is inclined to direct the petitioner to appear before the learned trial Court and to facilitate such appearance, the execution of the NBWA issued against the petitioner is ordered to be kept in abeyance for a period of 10 (ten) days from today within which time the petitioner shall appear before the learned Special Judge (POCSO), Baksa, Mushalpur and apply for a fresh bail.

7. If such an application is filed, the trial Court shall consider the causes shown for non-appearance on the next date fixed and shall pass appropriate orders and if required enhance the quantum of bond if so deemed fit.

8. With the aforesaid observation, this criminal petition stands closed.

JUDGE

Comparing Assistant