

GAHC010041672023



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

Case No. : Crl.Pet./205/2023

ANOWAR ALI @ BOGA
S/O MD. KADER ALI
R/O VILL- PASCHIM DIRINGAPUR
P.S. BARBARI
DIST. BAKSA, ASSAM

VERSUS

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

2:SRI AKAN MEDHI
S/O LT. UTPAL MEDHI
R/O VILL- ANANDAPUR C BLOCK
BRAHMAPUR

P.S. BARBARI
DIST. BAKSA
ASSA

Advocate for the Petitioner : MS F BEGUM

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 02.03.2023

Heard Mr. S. Paul, learned counsel for the petitioner. Also heard Mr. Bhaskar Sarma, learned APP appearing for the State respondent no.1.

2. By filing this criminal petition under section 482, read with section 397/401 Cr.P.C. and Article 227 of the Constitution of India, the petitioner has assailed the orders passed by the learned Special Judge, Baksa, Mushalpur in POCSO Case No. 29/2020, being the orders passed between 04.12.2021 and 15.07.2022.

3. By the said orders, not only NBWA was issued against the petitioner, but orders for proclamation and attachment was also issued vide orders dated 20.05.2022, 07.06.2022 and 06.07.2022.

4. In view of the order which is proposed to be passed in this application, issuance of notice on the respondent no.2 is dispensed with as the said respondent would not be prejudiced by the order proposed to be passed.

5. The prayer made in this application is opposed by the learned APP.

6. It is not in dispute that the petitioner, namely, Anowar Ali @ Boga had lastly appeared before the learned trial Court on 15.09.2021. Thereafter, on his prayer, the matter was adjourned on several dates and the petitioner remained absent with steps till 22.11.2021. On 04.12.2021, the petitioner defaulted in his appearance without steps.

7. NBWA was issued against the petitioner by order passed in various dates and on 20.05.2022, NBWA along with P&A was issued against the petitioner.

8. The learned counsel for the petitioner has referred to the police report appended to the warrant of attachment. The said report is quoted below:

“Honorable Sir,

With due respect beg to state as per order of the Attachment though went to the village but after searching could not find the accused person in the house. It is came to know on asking from the family member of house as well as neighbors that the accused went to Kerela since 8 month ago and nobody knew his address. He has no immovable or movable property in his name as such nothing can be seized. One copy of this affixed in the notice board of police station and another copy is returned to the Hon'ble Court."

9. Accordingly, the learned counsel for the petitioner has been able to demonstrate that the notice of attachment was not published in the manner as envisaged under sub-section (2) of section 82 Cr.P.C.

10. Therefore, the satisfaction of the Court to accept promulgation of P&A by order dated 15.07.2022 is not sustainable. Accordingly, the order dated 15.07.2022, accepting promulgation of P&A is set aside.

11. The only impediment of the petitioner to appear before the learned trial Court is issuance of standing warrant of arrest against the petitioner.

12. Under such circumstances, the Court does not find any infirmity in the orders passed for issuance of NBWA against the petitioner as he has evaded police for quite a long time.

13. Be that as it may, the learned counsel for the petitioner has also projected that the main accused, namely, Mirajul Ali, who is accused of eloping with the victim girl, has been acquitted by the learned Special Judge, POCSO, Baksa, Mushalpur by judgment 07.09.2022, passed in Spl. POCSO Case No. 29/2020.

14. In view of the acquittal of the prime accused, the Court is inclined to

suspend the NBWA issued against the petitioner in connection with the trial of the Spl. POCSO Case No. 29/2020, pending before the Court of learned Special Judge, POCSO, Baksa till 14.03.2023 or till appearance of the petitioner before the learned trial Court, whichever is earlier.

15. On appearance, the petitioner shall make a prayer for bail by disclosing the reasons for his past absence. If such application is made, the learned Special Judge, POCSO, Baksa shall consider the same in accordance with law taking note of the fact that the principal accused has already been acquitted by the learned trial Court.

16. The petitioner is permitted to produce a certified copy of this order before the learned trial Court to bring the order to the notice of the said learned Court.

17. With the aforesaid observation, this criminal petition stands disposed of, with liberty to approach again if so advised against order that may be passed on his appearance before the learned trial Court.

JUDGE

Comparing Assistant