

GAHC010070732023



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

Case No. : Crl.Pet./323/2023

SOURAB NATH @ LABU @ SAURAB KANTI NATH
S/O LT. SUSHIL RANJAN NATH
R/O DUDPATIL PART-V, NATHPARA, (NEAR SHIB MANDIR)
P.S. SILCHAR, DIST. CACHAR, ASSAM

VERSUS

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

2:RANJIT KUMAR NATH
R/O DUDPATIL PART-V NATHPARA
(NEAR SHIB MANDIR)
P.S. SILCHAR

DIST. CACHAR
ASSA

Advocate for the Petitioner : MR. M BISWAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

04.04.2023

Heard Mr. M. Biswas, learned counsel for the petitioner. Also heard Mr. B.

Sarma, learned Additional Public Prosecutor, Assam appearing for the State respondent.

By this petition under Section 482 Cr.P.C., the petitioner has prayed for quashing of the impugned order dated 18.09.2021, passed in Special (POCSO) Case No. 36/2020 by the learned Special Judge (POCSO Act), Cachar at Silchar issuing NBWA against the petitioner as well as the subsequent orders, dated 15.06.2022 and 28.09.2022, passed in the said case, whereby fresh NBWA and Proclamation were issued against the petitioner declaring him as absconder.

Mr. M. Biswas, learned counsel for the petitioner, submits that the charge-sheet vide C.S. No. 483, dated 30.06.2020 was laid showing the petitioner as absconder. Mr. Biswas submits that although summons were issued as per order, dated 04.02.2021, the petitioner never received any summons and due to the outbreak of Covid-19 pandemic the matter was adjourned on several occasions. But, Mr. Biswas submits, the learned trial Court without ensuring service of summons, issued NBWA against the petitioner vide order, dated 18.09.2021 and vide order, dated 15.06.2022, Proclamation and fresh NBWA were issued against the petitioner. Again, on 28.09.2022, the learned trial Court issued fresh NBWA and declared the petitioner as absconder. Mr. Biswas submits that as the petitioner could not appear before the learned trial Court because of non receipt of the summons and as he is willing to participate in the trial, an opportunity may be given to him to appear before the learned Court below and till his appearance, the execution of the NBWA issued against him may be directed to be kept in abeyance.

Mr. B. Sarma, learned Additional Public Prosecutor, submits that in the backdrop of facts stated above, the petitioner may be directed to appear before the learned Court below on a specified date, subject to conditions.

Be it mentioned here that within the ambit and scope of the power vested on this Court, under Section 482 Cr.P.C., the NBWA issued by the learned Court below cannot be recalled. However, having considered the above submissions made by the learned counsel for both the sides and consideration of the averments made in the petition supported by the documents annexed thereto, it is provided that the petitioner shall appear before the Court of learned Special Judge (POCSO Act), Cachar at Silchar within a period of **10(ten) days** from today and till his appearance, the execution of the NBWA issued against him shall be kept in abeyance subject to the condition that he will continue to appear before the learned trial Court till the trial of the case is completed.

The accused petitioner is at liberty to file regular bail application before the learned Court below and if such bail application is filed, the same shall be considered and disposed of in accordance with law.

With the above directions, the petition stands disposed of.

JUDGE

Comparing Assistant