

GAHC010098222023



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

Case No. : Crl.Pet./425/2023

MUKSIDUL ISLAM
S/O LT. HARMUJ ALI VII PENAI BAGAMUKH P.S. SAMUGRUI DIST.
NAGAON ASSAM

VERSUS

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

2:AJIMUDDIN
S/O LT. ESUB ALI VILL. GOROI MARI P.S. ULUONI DIST. NAGAON ASSA

Advocate for the Petitioner : MR. N UDDIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

10.05.2023

Heard Mr. N. Uddin, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Additional Public Prosecutor, Assam appearing for the State respondent No.1.

By this petition under Sections 482/401 Cr.P.C., the petitioner has prayed for quashing of the NBWA and P&A issued against him by the learned Special Judge,

Nagaon in Special Case No.22/2015 under Sections 4/17 of the POCSO Act.

Mr. N. Uddin, learned counsel for the petitioner, submits that on receipt of summons, the petitioner appeared before the Court of learned Special Judge, Nagaon on 21.06.2017 and he was allowed to remain on previous bail. Thereafter, till 30.01.2019, the petitioner had been regularly appearing before the learned Court below. Mr. Uddin submits that the petitioner being a poor person went to Kerala for earning his livelihood for which on 17.04.2019, he could not appear before the learned Court below and the learned trial Court issued NBWA against him which had been re-issued from time to time. Thereafter, Mr. Uddin submits, on 21.12.2021, P&A was issued against the petitioner. Mr. Uddin submits that non appearance of the petitioner before the learned trial Court was completely unintentional and as he is willing to participate in trial, an opportunity may be given to the him to appear before the learned Court below and till his appearance, the execution of the NBWA and P&A 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 and P&A issued by the learned Court below cannot be recalled. However, having considered the above submissions made by the learned counsel for both 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, Nagaon** within a period of **15(fifteen) days** from today and till his appearance, the execution of the NBWA and P&A issued against him shall be kept in abeyance subject to the condition that if he fails to appear before the learned Court below within the specified period of **15(fifteen) days**, on and from **16th day** this order shall have no force.

With the above direction, the petition stands disposed of.

JUDGE

Comparing Assistant