

GAHC010135842023



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

Case No. : Crl.Pet./598/2023

KAMAL GOGOI
S/O SRI JADAV GOGOI
R/O RAMPUR MEGHELA
P.O. AND P.S. SADIYA
DIST. TINSUKIA, ASSAM

VERSUS

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

2:SRI MOHANTA BORUAH
S/O SRI BOKUL BORUAH
R/O VILL- KUNDIL MIRI CHAPORI
P.S. SADIYA
DIST. TINSUKIA
ASSAM
PIN-786158

Advocate for the Petitioner : MR. N HASAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI
ORDER

20.06.2023

Heard Mr N Hasan, learned counsel for the petitioner and Mr B Sarma, learned Additional Public Prosecutor for the State of Assam.

This application has been preferred by the petitioner under Section 482 CrPC, praying for quashing of the order dated 10.06.2023, passed by the learned Additional Sessions Judge-cum-Special Judge (POCSO), Tinsukia, in POCSO Case No. 42/2023, under Sections 363/376(3) IPC, read with Section 4 of the POCSO Act, whereby NBWA has been issued against the petitioner.

It is submitted by the learned counsel for the petitioner that as the petitioner was not found at home, the summons were served upon the father of the petitioner by the Police Personnel of Sadiya Police Station and that execution of summons is not permissible under the law as the same is clearly violative of the provisions contained in the Code of Criminal Procedure, 1973. Despite that, the learned trial Court deemed such execution of summons as proper service and in view of the absence of the petitioner, was pleased to issue NBWA against the petitioner vide order dated 10.06.2023. It is further submitted that the petitioner was not informed by his father about execution of such summons in connection with the aforesaid case, as such he could not appear in the case.

It is also the submission of the learned counsel for the petitioner that the petitioner has undertaken to appear before the learned trial Court and ready to face the trial. However, in view of the NBWA issued against him, he has reasonable apprehension that he may be arrested and put behind the bar. Accordingly, learned counsel for the petitioner prays for an interim order thereby staying the execution of the NBWA issued against the petitioner vide order dated 10.06.2023.

On the other hand, learned Additional Public Prosecutor has raised no objection if the NBWA issued against the petitioner is kept in abeyance till his appearance before the concerned Court.

Considering the submissions made by the learned counsel for the parties and the undertaking given by the petitioner, the prayer of the petitioner is allowed.

Considering all entirety of the matter, the present petition stands disposed of with

a direction to the petitioner to appear before the learned trial Court within a period of 15 (fifteen) days from today and file a bail application and on such appearance and filing of the bail application, the learned trial Court shall consider the same as per the provision of law. Till such appearance of the petitioner before the learned trial Court, the non-bailable warrant of arrest issued against him, be kept in abeyance.

The Criminal Petition stands disposed of, accordingly.

JUDGE

Comparing Assistant