

GAHC010147682023



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

Case No. : Crl.Pet./674/2023

MD. MUJIBUR RAHMAN
S/O MD. ABDUL BARRIK R/O VILL. SHYAMBARI NO. 2 P.S. LANKA DIST.
NAGAON ASSAM

VERSUS

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

2:SUFIA BEGUM
W/O MD. ABDOUL KALAM R/O DABLONG WARD NO. 6 P.S LANKA DIST.
NAGAON ASSA

Advocate for the Petitioner : MR A W AMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 06.07.2023

Heard Mr. S. Nawaz, learned counsel for the petitioner. Also heard Ms. S. H. Bora, learned Additional Public Prosecutor for the State.

This petition under section 482 of the Code of Criminal Procedure 1973 has been filed seeking quashing of orders passed on 20.01.2022 and thereafter,

several orders upto 14.06.2023 by learned Special Judge, Hojai whereby Non Bailable Warrant of Arrest was issued against the present petitioner and thereafter, a proclamation and attachment order was also issued by the learned Trial Court.

It is the case of the petitioner that in Special (P) Case No.7 (H)/2022, charge-sheet was laid against the present petitioner under section 376/511 of the Indian Penal Code read with Section 8 of the POCSO Act, 2012 showing the present petitioner as absconder in column No. 2 of the charge-sheet.

It also appears that on receipt of the said charge-sheet on the very first day itself learned Trial Court issued Non Bailable Warrant of arrest against the petitioner fixing 09.03.2022 for appearance, thereafter on several other subsequent dates, the Non Bailable Warrant of Arrest were issued against the present petitioner and ultimately on 05.09.2022 learned Trial Court issued proclamation and attachment order against the present petitioner.

Learned counsel for the petitioner has submitted that this Court in ***Kabir Ahmed V. State of Assam, 2011 (1) GLT 561*** had made it clear that police has no power to show a person as an absconder in charge-sheet without obtaining previous order of the Court.

It is also submitted by the Hon'ble Apex Court in ***Inder Mohan Goswami and Anr. V. State of Uttaranchal*** reported in ***(2007) 12 SCC 1*** has decried the issuance of Non Bailable Warrant of Arrest at the first instance without availing other options for securing the presence of the accused such as issuance of summons to be followed by Bailable Warrant of Arrest.

In the instant of the case, on perusal of the record, it is apparent that learned Trial Court issued Non Bailable Warrant of Arrest at the first instance itself i.e. on 20.01.2022 merely on the basis of endorsement in the charge-sheet

showing the present petitioner as an absconder.

Learned Additional Public Prosecutor fairly submits that the Trial Court ought to have issued summons at the first instance i.e. the present petitioner to secure his attendance.

Considering the submissions made by learned counsel for both sides materials on record, this present criminal petition is disposed with an observation that the petitioner shall appear before the learned Trial Court on next date fixed i.e. on 28.08.2023 and shall face his trial and till then, the Non Bailable Warrant of Arrest issued against him by the learned Trial Court as well as the order of proclamation and attachment issued against the present petitioner by the learned Trial Court shall be kept in abeyance.

JUDGE

Comparing Assistant