

GAHC010180652023



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

**Case No. : Crl.Pet./861/2023**

ROKIBUL ISLAM AND 2 ORS.  
S/O- ABDUR RAHMAN, VILL.- BANKABHANGA, P.S. KALGACHIA, DIST.  
BARPETA, ASSAM, PIN- 781319.

2: SHAHAJUL ISLAM  
S/O- SHOHID ALI  
VILL.- CHAR KHELLY  
P.S. KALGACHIA  
DIST. BARPETA  
ASSAM  
PIN- 781319.

3: ABDUS SALAM  
S/O- LATE JOYNAL ABDIN  
VILL.- RAMPUR  
P.S. KALGACHIA  
DIST. BARPETA  
ASSAM  
PIN- 781319

VERSUS

THE STATE OF ASSAM  
REPRESENTED BY THE P.P., ASSAM

**Advocate for the Petitioner : G UDDIN**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY**  
**O R D E R**

**22.08.2023.**

Heard Mr. G. Uddin, learned counsel for the petitioner. Also heard Mr. P Borthakur, learned Additional Public Prosecutor, Assam.

2. This is an application under section 482 Cr.P.C., praying for quashing and setting aside the proceeding of the Special POCSO Case No. 21/2023, pending in the Court of learned Additional District and Sessions Judge-cum- Special Judge (POCSO), Barpeta as well as the impugned order dated 30.03.2023 and subsequent orders passed by the learned Special Judge, Barpeta issuing NBWA against the petitioner No. 1 and Petitioner No. 2, namely ***Rokibul Islam and Shahajul Islam*** , in connection with Special POCSO Case No. 21/2023.
3. The background fact leading to filing of the present petition is that the informant namely Abdus Salam (petitioner No. 3), father of the alleged victim lodged an FIR in the Barbhita Out Post on 06.08.2022, stating inter alia that on 27.07.2022, the petitioner No. 1 and 2, kidnapped his minor daughter while she was coming from School. On the basis of the said FIR, a case was registered being Kalgachia Police Station Case No. 150/2022 under Sections 366(A)/34 of IPC and started investigation..
4. After completion of the investigation, charge sheet being Charge Sheet No. 01/2023 dated 24.03.2023 under Sections 366A/34 IPC

read with Section 4 of the POCSO Act against the petitioner Nos. 1 and 2 was submitted before the learned court of Additional District & Sessions Judge –Cum- Special Judge, (POCSO), Barpeta.

5. Subsequently, the petitioner Nos. 1 and 2 and the petitioner No. 3 have amicably settled their disputes by clearing their misunderstanding and in this regard, petitioner No. 3 executed an affidavit before the Notary Public, Kamrup (M) at Guwahati which is annexed as Annexure-4 to this petition, wherein the petitioner No. 3 declared that to he will have no objection if this Hon'ble Court quash the criminal proceeding of the Special POCSO Case No. 21/2023, pending in the Court of learned Additional District and Sessions Judge-cum- Special Judge (POCSO), Barpeta.
6. In the aforesaid backdrop, this Court is now to decide whether this is a fit case where this Court can exercise its inherent power under Section 482 of Cr.P.C. to quash the criminal proceeding in Special POCSO Case No. 21/2023, pending in the Court of learned Additional District and Sessions Judge-cum- Special Judge (POCSO), Barpeta.
7. It is by now settled that a High Court in exercise of its power under Section 482 of Cr.P.C. can very well quash a criminal proceeding or a criminal complaint under Section 482 of Cr.P.C., but while doing so, the Court is to follow certain principles as enunciated by the Hon'ble Apex Court in ***Gian Singh –Vs- State of Punjab and Another*** reported in ***2012 10 SCC 303***, and in ***State of Madhya Pradesh –Vs- Laxmi Narayan and Others*** reported in ***2019 5 SCC 688***.
8. Under what circumstances and in which cases the High Court can

exercise such power will depend on the fact and circumstances of each case. It is also settled that offences which involve moral turpitude and grave offences like rape, murder etc. even if compromised cannot be quashed in exercise of High Court's power under Section 482 Cr.P.C. inasmuch as such offences are against the State and cannot be restricted to two individuals or groups.

9. In the case in hand, the offences are grave in nature involving minor victim. The allegations as narrated in the FIR are under Section 366A/34 IPC read with Section 4 of the POCSO Act. Therefore, when the offences are grave in nature and allegation is of kidnapping of a minor, such allegation and criminal proceeding cannot be quashed on the basis of a compromise entered into between the families of the victim and accused inasmuch when it is an offence involving a minor, the parents, in the considered opinion of this Court cannot give consent on behalf of the minor to compromise such serious offences.
10. In view of the aforesaid findings, discussions and reasons, the prayer for setting aside and quashing the proceeding of the Special POCSO Case No. 21/2023, pending in the Court of learned Additional District and Sessions Judge-cum- Special Judge (POCSO), Barpeta is rejected. The learned Court below is directed to proceed with the trial forthwith.
11. Now, coming to the prayer for setting aside the impugned order dated 30.03.2023 and subsequent orders passed by the learned Special Judge, Barpeta issuing NBWA against the petitioner No. 1 and Petitioner No. 2, namely ***Rokibul Islam and Shahajul***

**Islam** , in connection with Special POCSO Case No. 21/2023, the aforesaid NBWA has been issued as the petitioners failed to appear before the learned court below during the trial on 30.03.2023.

12. The learned counsel for the petitioners referring to paragraphs 13, 14 and 15, submits that there is no wilful default on their part, inasmuch as they had never received any summon from the Court and therefore, for the reasons as explained in the aforesaid paragraphs, the petitioner Nos. 1 and 2 could not appear.
13. The learned counsel further submits that the petitioner Nos. 1 and 2 gives an undertaking that they will appear before the court on each and every date.
14. Considered the aforesaid submissions made and also considered the materials available on record including the submission made in this petition.
15. In view of the aforesaid, this Court is of the opinion that the petitioner Nos. 1 and 2 are entitled for limited relief to the extent of staying the NBWA issued against them till the petitioners appears before the learned trial Court and seeks a regular bail/ any other application permitted under Law to recall the NBWA.
16. Accordingly, the present revision petition is disposed of with a direction to the petitioner Nos. 1 and 2 to appear before the learned trial Court on the next date fixed or within a period of 2 weeks from today, whichever is earlier and file appropriate application as indicated hereinabove.
17. It is further provided that till such period, the NBWA issued on

30.03.2023, and subsequent orders hereinabove shall not be executed.

18. While parting with the record, it is clarified that this court has not commented on merit of explanation given and the learned trial court shall apply its own mind in deciding any application pursuant to this order and shall not be influenced by any observation made in the case by this court.
19. With the aforesaid observations, the criminal petition stands disposed of by directing the petitioner Nos. 1 and 2 to appear before the learned trial Court below and seeks a regular bail/ any other application permitted under law to recall the NBWA and till then, the NBWA issued against them shall not be executed.

**JUDGE**

**Comparing Assistant**