

GAHC010190482023



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

Case No. : Crl.Pet./914/2023

BIRU SARKAR
S/O- PANCHANAN SARKAR, R/O- WARD NO. 4, CHAPAR TOWN, P.S.
CHAPAR, DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:MANIKA SARKAR
W/O- SRI BANESWAR SARKAR
R/O- AUGUST KANTI PATH
JAYANAGAR
P.S. DISPUR
DIST. KAMRUP(M)
ASSA

Advocate for the Petitioner : MR. A AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

31.08.2023

Heard Mr. A. Ahmed, learned counsel for the petitioner and also Ms. S.H. Bora, learned Additional Public Prosecutor, Assam, appearing for the State respondent No.1.

2. Legality, propriety or correctness of the order dated 12.01.2023 passed by the learned Special Judge, POCSO, Kamrup(M), in Sessions Special Case No.1027/2019 is put to challenge in this petition by the petitioner, namely, Biru Sarkar, under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973 and under Article 227 of the Constitution of India. It is to be noted here that vide impugned order, the learned below has issued non-bailable warrant of arrest against the present petitioner.

3. Mr. Ahmed, learned counsel for the petitioner submits that the petitioner was charge-sheeted in Sessions Special Case No.1027/2019 to stand trial under Section 8 of the POCSO Act, which is now pending before the Court of learned Special Judge, POCSO, Kamrup(M) at Guwahati. Mr. Ahmed further submits that at first, the learned Court below had issued summon to the petitioner and without service of summon, the learned Court below has issued bailable warrant of arrest and thereafter, without execution of the bailable warrant, the learned Court below has issued non-bailable warrant of arrest vide impugned order dated 12.01.2023. Mr. Ahmed further submits that the petitioner is ready to face trial and will appear before the learned Court below on each and every date and therefore, Mr. Ahmed contended to set aside the impugned order(s) by which non-bailable warrant of arrest and P&A was issued against the petitioner.

4. Ms. S.H. Bora, learned Additional Public Prosecutor submits that the petitioner may be directed to appear before the learned Court below within 15(fifteen) days from today.

5. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the impugned order dated 12.01.2023.

6. It appears that vide impugned order dated 12.01.2023, the learned Court below has issued non-bailable warrant of arrest against the petitioner on the ground that bailable warrant of arrest, issued against him returned unserved with a report. The reason assigned for issuing non-bailable warrant of arrest issued against the petitioner seems to be not in accordance with law and as such, this Court is inclined to interfere with the same.

7. Accordingly, this Court is inclined to allow this petition by directing the petitioner to appear before the learned Court below within 15(fifteen) days from today and in the event of his appearance and filing an application, praying for regular bail, the learned Court shall consider the same, in accordance with law.

8. Till then, non-bailable warrant of arrest and P&A issued against the petitioner, shall remain suspended.

Sd/- *Robin Phukan*
JUDGE

Comparing Assistant