

GAHC010191802023



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

Case No. : Crl.Pet./917/2023

RABIAL HUSSAIN @ ROBIUL HOQUE
S/O MD. ALIMUDDIN
R/O MAJAR CHAR
P.S. ALOPATI
DIST. BARPETA, ASSAM

VERSUS

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

2:SANIYARA KHATUN
D/O LATE SAMSUL ALI
R/O MANDIRA NC
P.S. BOKO
DIST. KAMRUP
ASSA

Advocate for the Petitioner : MR. A PARAMANIK

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

31.08.2023

Heard Mr. A. Paramanik, learned counsel for the petitioner and also Ms. S.H. Bora,

learned Additional Public Prosecutor, Assam, appearing for the State respondent No.1.

2. By this application, under Section 482 Cr.P.C., the petitioner, namely, Rabial Hussain @ Robiul Hoque has challenged the correctness or otherwise of the order dated 04.05.2023 passed by the learned Judicial Magistrate First Class, Boko, Kamrup, in G.R. Case No.2240/2017, arising out of Nagarbera P.S. Case No.231/2017, under Section 376/379/34 IPC. It is to be noted here that vide impugned order dated 04.05.2023, the learned Court below has issued non-bailable warrant of arrest against the present petitioner.

3. Mr. Paramanik, learned counsel for the petitioner submits that in this case, the petitioner along with two other accused were charge-sheeted and earlier all of them were arrested and they were enlarged on bail. But, on the date fixed, the petitioner could not turn up as he is a daily wage earner and was in Meghalaya and therefore, the learned Court below has issued non-bailable warrant of arrest against him and he is ready to face trial and will appear before the learned Court below on the next date, which is fixed on 12.09.2023 and therefore, it is contended to allow the petition.

4. Whereas Ms. S.H. Bora, learned Additional Public Prosecutor also submits that the petitioner may be directed to appear before the learned Court below and to participate in the trial.

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 04.05.2023.

6. It is to be noted here that on the date fixed i.e. 04.05.2023, the petitioner remained absent, for which the learned Court below has issued non-bailable warrant of arrest. The ground for absence, as submitted by Mr. Paramanik, learned counsel for the petitioner is that the petitioner is a daily wage earner and he was at Meghalaya and therefore, he could not turn up.

7. Having heard the submission of learned Advocates of both sides and also

considering the facts and circumstances on the record, I find no infirmity in the impugned order dated 04.05.2023, but since the petitioner is now ready to participate in the trial, this Court is inclined to dispose of this petition by directing him to appear before the learned Court below on the date fixed i.e. on 12.09.2023 and in the event of appearance of the petitioner before the learned Court below and in the event of filing an application for regular bail or to remain on previous bail, the learned Court below shall consider the same in accordance with law.

8. Till then, non-bailable warrant of arrest issued against the petitioner stands stayed.

Sd/- Robin Phukan
JUDGE

Comparing Assistant