

GAHC010222172023



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

Case No. : Crl.Pet./1079/2023

RABIRAM SOREN@ RABI SUREN AND ANR
S/O LAKHIRAM SOREN @ SUREN
R/O KAWLI, CHANDANPUR, P.S. TAMULPUR, DIST. BAKSA, ASSAM
PIN-781367

2: SRI MATHIAS MARDI @ MARTIAS MARDI @ MOTIES MARDI
S/O CHULTUN MARDI @ CHOLTU MARDI
R/O KAWLI
CHANDANPUR
P.S. TAMULPUR
DIST. BAKSA
ASSAM
PIN-78136

VERSUS

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

2:MISS BUDHIN KISKU
D/O LATE SOPAL KISKU

R/O VILL- CHANDRAPUR

P.S. UDALGURI
DIST. UDALGURI
BTAD
ASSAM
PIN-78450

Advocate for the Petitioner : MR. A A R KARIM

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

04.10.2023

Heard Mr. AAR Karim, learned counsel for the petitioners. Also heard Ms. S.H. Bora, learned Additional Public Prosecutor, appearing for the State of Assam.

This application under Section 482 of the Code of Criminal Procedure, 1973 has been preferred by the petitioners, namely, (1) Sri Rabiram Soren @ Rabi Suren and (2) Sri Mathias Mardi@ MartiasMardi @ Moties Mardi, impugning the order dated 20.05.2022 and subsequent orders passed by learned Special Judge (POCSO), Baksa, Mushalpur in Spl.POCSO Case No. 11/2019 under Section 6 of POCSO Act, 2012 corresponding to the Tamulpur P.S. Case No. 105/2019.

Learned counsel for the petitioners submits that the Spl.POCSO Case No. 11/2019 was registered on the basis of the charge-sheet which was laid after investigation which was initiated on the basis of an FIR lodged on 14th March, 2019 by the victim herself, *inter-alia* alleging that the five accused persons named in the FIR including the present petitioners, who committed rape on her on 13.03.2019.

Learned counsel for the petitioners has submitted that after filing of the charge-sheet the present petitioners appeared before the learned Trial Court to face the trial.

However, later on, they defaulted and thereafter, non-bailable warrant of arrest was issued.

It is submitted by learned counsel for the petitioners that on 15.06.2022, when the said POCSO Case was fixed before learned Special Judge (POCSO), Baksa, Mushalpur, due to non-appearance of the present petitioners as at that time they were working at Bangalore as daily wage earners and their bailor intimated the said fact to the learned Trial Court by filing a petition which was numbered as 319/2022. However, the learned Trial Court rejected the said petition and issued non-bailable warrant of arrest against both the petitioners on the next date fixed, i.e. on 14.07.2022. Again when the petitioners were absent in the learned Trial Court and the non-bailable warrant of arrest issued against the petitioners were not returned back after execution, the learned Trial Court issued P/A against both the accused persons and also issued fresh non-bailable warrant of arrest. It also appears that on the next date, i.e. on 3rd August, 2022, the P/A issued against the present petitioners returned back to the learned Trial Court with a report that the present petitioners were not found in their given address and considering this fact, the learned Trial Court issued a standing warrant of arrest and the said case was filed till the petitioners are apprehended and brought before the said Court.

Learned counsel for the petitioners has also submitted that the other three named accused in the FIR, namely, (1) Sri Mahesh Murmu, (2) Sri Ajay Tudu and (3) Sri Mahom Murmu who were juvenile on the date of commission of alleged offence faced enquiry before the learned Juvenile Justice Board, Baksa and after completion of enquiry, they were acquitted of the charges levelled against them.

Learned counsel for the petitioners submits that the petitioners are willing to face the trial and they are willing to appear before the learned Trial Court. It is also submitted that they will seek necessary relief before the learned Trial

Court after their appearance before the learned Trial Court. However, it is prayed that they may be protected till their appearance before the learned Trial Court, so as to enable them to appear before the learned Trial Court without being apprehended.

I have also heard the learned Additional Public Prosecutor, who submits that she has no objection if the petitioners face trial before the learned Trial Court.

Considering the submissions made by learned counsel for the petitioners as well as learned Additional Public Prosecutor, this criminal petition is disposed of with a direction that the present petitioners, namely, (1) Sri Rabiram Soren @ Rabi Suren and (2) Sri Mathias Mardi @ MartiasMardi @ Moties Mardi shall appear before the learned Trial Court on or before 19.10.2023 and shall face the trial in Spl.POCSO Case No. 11/2019. They may also pray for any relief before the learned Trial Court, including that of bail which shall be considered by learned Trial Court as per law if such a prayer is made. To facilitate the present petitioners to appear before the learned Trial Court, the operation of pending non-bailable warrant of arrest issued by the learned Trial Court shall remain stayed till 19.10.2023, so as to enable the present petitioners to appear before the learned Trial Court.

With this observation, this instant criminal petition is disposed of.

JUDGE

Comparing Assistant