

GAHC010223022023



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

Case No. : Crl.Pet./1082/2023

HEKMAT ALI
S/O ARFAN ALI
R/O VILL- NO. 2, KAWADI,
P.S. MANIKPUR
DIST. BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : DR G J SHARMA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 04.10.2023

Heard Mr. A. Kundu, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State.

This application under Section 482 of the Code of Criminal Procedure, 1973 has been filed by the petitioner impugning the order dated 23.05.2023 and subsequent orders passed by learned Special Judge, Bongaigaon and

Special (POCSO) Case No. 71(M)/2023.

Learned counsel for the petitioner has submitted that in pursuant to the investigation which was initiated after filing of an FIR by one Tamser Ali on 02.02.2023 charge-sheet was laid against two numbers of accused persons including the present petitioner under the prohibition of Child Marriage Act, 2006 as well as POCSO Act, 2012 and the provisions of the Indian Penal Code showing the present petitioner as an absconder in the charge-sheet.

Learned counsel for the petitioner submitted that by the impugned order dated 23.05.2023, learned Court of Special Judge issued warrant of arrest on the first instance itself on the date of taking cognizance without issuing any summons to the present petitioner. Learned counsel for the petitioner has submitted that it is no *res integra* that even if an accused is shown as absconder in the charge-sheet unless the accused has been declared as an absconder under the provisions of Code of Criminal Procedure, 1973 by the Court of law, the warrant of arrest should not be issued to such accused at the first instance.

It is also submitted by learned counsel for the petitioner that at the first instance summons ought to have been issued. It is further submitted by learned counsel for the petitioner that the petitioner is willing to appear before the learned Trial Court and face the trial. It is also submitted by learned counsel for the petitioner that as a warrant of arrest is pending against the present petitioner, he may be given interim protection so that he may appear before the Trial Court and pray for necessary relief before learned Trial Court.

On the other hand, learned Additional Public Prosecutor submits that at the first instance, the learned Trial Court ought to have issued summons and in this regard he also cited a ruling of Hon'ble Supreme Court of India in "***Inder***

Mohan Goswami –Vs- State of Uttaranchal”reported in “***(2007) 12 SCC 1***”.

Considering the submissions made by learned counsel for both sides, this instant criminal petition is disposed of with a direction to the present petitioner to appear before the Court of learned Special Judge, Bongaigaon within a period of next fifteen days from the date of this order and cooperate in his trial. On his appearance before learned Trial Court, he may pray for any relief before the learned Trial Court including the relief of bail and if such prayer is made, same shall be considered as per law by the learned Trial Court. However, to facilitate the present petitioner to appear before the learned Trial Court, the operation of the warrant of arrest issued against the present petitioner shall remain stayed for next 15(fifteen) days.

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

JUDGE

Comparing Assistant