

GAHC010239682022



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

Case No. : Crl.Pet./1201/2022

NUR HUSSAIN @ SAH ALAM
S/O ABDUL KARIM
VILL- SALKATA AMBARI, P.O. BARKALIA
P.S. PAKIRGANJA
DIST. DHUBRI, ASSAM
PIN-783330

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M U MONDAL

Advocate for the Respondent : PP, ASSAM

B E F O R E
HON'BLE MR. JUSTICE ROBIN PHUKAN

23-01-2023

Heard Mr. M.U. Mondal, learned counsel for the petitioner. Also heard Ms. S. Jahan, learned Additional Public Prosecutor appearing for the State Respondent.

In this petition under Section 482 of the Code of Criminal Procedure, the petitioner, namely Nur Hussain @ Sah Alam, has challenged the correctness or otherwise of the order dated 1.11.2019, passed by the learned Special Sessions Judge, Kamrup (M) in NDPS Case No.41/2019

(GRPS P.S. Case No.308/2018) under Section 328/379 I.P.C., read with Section 22(b) NDPS Act.

It is to be noted that vide the impugned order, dated 1.11.2019, the learned Court below has issued non-bailable warrant of arrest against the present petitioner.

Mr. Mondal, learned counsel for the petitioner submits that while the case was fixed for consideration of charge on 1.11.2019, the petitioner could not appear before the learned Court below on account of his illness and his counsel therein has filed one petition for adjourning the case. But, the learned Court below has dismissed the same as one of the co-accused was languishing in jail *hazot* and directed for issuance of non-bailable warrant of arrest against the present petitioner.

Mr. Mondal further submits that no medical document is enclosed along with the present petition to justify the absence of the petitioner before the learned Court below on 1.11.2019. However, Mr. Mondal assured this Court that the petitioner is ready to participate in the trial and, therefore, it is contended to stay the execution of the non-bailable warrant of arrest issued against the present petitioner till next date.

Ms. Jahan, learned Additional Public Prosecutor, however, referring to the different orders of the learned Court below annexed with the petitioner submits that the learned Court below has rightly issued non-bailable warrant of arrest against the present petitioner, as he remained absent before the learned Court below repeatedly and, therefore, Ms. Jahan has opposed the petition.

Having heard the submission of learned advocates for both sides, I have carefully gone through the petition and documents enclosed and also

perused the impugned order dated 1.11.2019. It appears that the learned Court below has not committed any illegality or impropriety in passing the impugned order, dated 1.11.2019 and issuing the non-bailable warrant of arrest against the present petitioner, as his conduct, as pointed out by the learned Additional Public Prosecutor, was not at all satisfactory.

However, as the petitioner is 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 by filing an appropriate application within a period of 15 days from today and, in the event of such an application being filed, the learned Court below shall consider the same in accordance with law. Till then, the non-bailable warrant of arrest issued against the present petitioner is kept in abeyance.

Later on, Mr. Mondal, learned counsel for the petitioner submits that the learned Sessions Judge, Kamrup (M), vide order dated 28.11.2022 has transferred the case to the Court of learned Chief Judicial Magistrate (M) as it was registered under Section 21(a) of the NDPS Act.

In view of the above, the petitioner shall appear before the Court of learned Chief Judicial Magistrate, Kamrup (M) within fifteen days from today.

JUDGE

Comparing Assistant