

GAHC010291902023



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

Case No. : Crl.Pet./1388/2023

JEHIRUL ISLAM
S/O SAIFUL ISLAM
R/O VILL- DIGHALICHAPURI
P.S. JAMUGURI, DIST. SONITPUR

-VERSUS-

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

2:AINUL HOQUE
S/O MD. KARYAT ALI
R/O VILL- DIGHALICHAPURI
P.S. JAMUGURI, DIST.- SONITPUR

Advocate for the Petitioner : MR. N BORAH

Advocate for the Respondent : PP, ASSAM

- B E F O R E -

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

21.12.2023

Heard Mr. N. Borah, learned counsel for the petitioner. Also heard Mr. K.K. Parashar, learned Additional Public Prosecutor, Assam.

This application under Section 482 read with Section 401 of the Code of

Criminal Procedure, 1973 has been filed by the petitioner, namely, Jehirul Islam, impugning the order dated 31.08.2023 passed by the learned Special Judge, POCSO, Sonitpur, Tezpur in Special (POCSO) Case No.18/2022 whereby the prayer of the petitioner to adduce defence evidence was closed by the Trial Court and the case was fixed for next date i.e. for argument.

Learned counsel for the petitioner has submitted that the petitioner is contesting the case which is pending against him in the Court of learned Special Judge, POCSO and he has engaged Mr. F. Haque as his counsel.

It is submitted by the learned counsel for the petitioner that though the case was fixed for adducing defence witness evidence on 31.08.2023, however, as the counsel engaged by the petitioner had some medical issues and had to undergo bypass surgery, he could not appear on the said date.

The petitioner had filed an application before the Trial Court on the said date showing the cause and praying for adjournment for adducing defence witness evidence. However, the same was rejected by the Trial Court on the ground that the petitioner has been seeking repeated adjournments since the month of May, 2023.

Learned counsel for the petitioner has submitted that if the petitioner is not allowed to adduce defence witness evidence, the petitioner would be highly prejudiced. Therefore, learned counsel for the petitioner prays for at least one chance to allow the petitioner to adduce defence witness evidence in the POCSO case pending against the petitioner.

Learned counsel for the petitioner has also furnished some medical documents including the discharge certificate which shows that his engaged counsel Mr. F. Haque had been suffering from coronary artery disease and had undergone surgical intervention for coronary artery bypass.

Learned Additional Public Prosecutor, Assam has fairly submitted that considering the grounds mentioned by the petitioner at least one chance may be afforded to the petitioner to adduce his defence witness evidence.

Considering the fact that the petitioner appears to have a genuine cause for not being able to adduce defence witness evidence on the date fixed, i.e. 31.08.2023 when the case was fixed before the Trial Court, however, also considering the fact that the petitioner has taken several adjournments for adducing defence witness evidence, last one chance is hereby given to the petitioner.

In view of the above, the Trial Court is directed to allow the petitioner at least one chance to adduce his defence witness by fixing any suitable date in the month of January, 2024. However, it is hereby made clear that no further indulgence should be granted to the present petitioner under any circumstance by the Trial Court.

The petitioner shall accordingly appear before the Trial Court on 26.12.2023, on which date, the case is fixed before the Trial Court. On his appearance, the learned Trial Court would defer the delivery of judgment fixed in the said case and give an opportunity to the present petitioner as directed hereinabove.

With the above observations, this criminal petition is hereby disposed of.

Let a copy of this order be furnished to Mr. K.K. Parashar, learned Additional Public Prosecutor, Assam by the Registry.

JUDGE

Comparing Assistant