

GAHC010030412024



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

Case No. : Crl.Pet./175/2024

PANKAJ SARKAR
S/O SRI HARIBANDHU SARKAR
R/O BARALIMARI
P.O. BARALIMARI,
P.S. BHURAGAON,
DIST. MORIGAON, ASSAM

VERSUS

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

2: MALABIKA SARKAR (VICTIM)
D/O AMAN SARKAR
R/O VILL- 1 NO. BARPATHAR
P.S. BHURAGAON
DIST. MORIGAON
ASSA

Advocate for the Petitioner : H A SARKAR

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 17.02.2024

Heard Mr. H. A. Sarkar, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

This is an application under Section 482 of the Code of Criminal Procedure, 1973 for recalling and setting aside the Order dated 19.01.2024, passed by the learned Special Judge (POCSO), Morigaon, in POCSO Case No. 171/2022, whereby the petition filed on behalf of the present petitioner was rejected by the learned Court below and issued NBWA against him.

It is submitted by Mr. Sarkar, learned counsel for the petitioner, that the petitioner was regularly appearing before the learned Court below on each and every date of listing. However, on 19.01.2024, due to his illness, he could not appear before the learned Court below and in that regard, a petition was also filed on his behalf. But, due to some wrong identification by the Bench Assistant, the petition was rejected by the learned Special Judge. The present petition is also accompanied with some medical documents to show that the present petitioner was ill on 19.01.2024 and was under treatment. He further submitted that the petitioner is ready and willing to appear before the learned Court below, but as the NBWA as already been issued against him, there is apprehension of arrest in connection with this case and hence, the present petition has been filed for setting aside and quashing the order of issuing NBWA against him vide order dated 19.01.2024.

In this context, Mr. Borthakur, learned Additional Public Prosecutor, has submitted that the present petitioner is seems to be appearing before the learned Court below regularly and hence, considering his conduct, his prayer may be considered.

After hearing the submissions made by the learned counsels for both sides and also considering the previous conduct of the accused/petitioner as well as the medical ground taken by the accused/petitioner, I find it a fit case to allow this petition. Accordingly, the accused/petitioner is hereby directed to appear before the learned Court below within 10 (ten) days from the date of this order and till his appearance before the learned Special Judge (POCSO), Morigaon, the execution of NBWA issued against the present petitioner vide order dated 19.01.2024 shall remain stayed. Further, on his appearance, the learned Court below shall pass necessary order in accordance with law.

In terms of above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant