

GAHC010042802024



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

Case No. : Crl.Pet./248/2024

EKSED ALI
S/O HURMAT ALI
R/O BARBALA
P.S. MUKALMUA
DIST. NALBARI, ASSAM

VERSUS

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

2:NASER BHUYAN
S/O LT. KASHEM BHUYANR/O KHANDAKARPARA
P.S. BARPETA

DIST. BARPET

Advocate for the Petitioner : MR. A PARAMANIK

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 04.06.2024

Heard Mr. A. Paramanik, learned counsel for the petitioner. Also

heard Mr. R.J. Baruah, learned Additional Public Prosecutor for the State.

This application has been preferred under Section 482 Cr.P.C. r/w Article 227 of Indian Constitution of India for quashing or setting aside the impugned order dated 09.05.2022 and subsequent orders passed by learned Special Judge (POCSO), Barpeta, Assam in connection with Special (POCSO) Case No. 81/2022 (arising out of Barpeta P.S. Case No. 1951/2021) under Section 120(B)/365/376 of IPC r/w Section 10 of PCM Act and r/w Section 4 of POCSO Act, whereby NBWA and P/A issued against the petitioner.

It is submitted by the learned counsel for the petitioner that the petitioner was shown as absconder in the charge-sheet but in the first instance, warrant of arrest was issued against the petitioner considering the gravity of the offence. It is also submitted that no summons was issued earlier against the petitioner. Under such backdrop, the learned counsel for the petitioner has prayed that the warrant of arrest and P&A be recalled.

On the other hand, Mr. Baruah, learned Additional Public Prosecutor has submitted that in the case *Inder Mohan Goswami & Another vs State Of Uttaranchal & Others*, reported in (2007) 12 SCC 1, the Hon'ble Supreme Court has held that- in complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seems to be avoiding the summons, the court, in the second instance should issue bailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of

issuance of the non-bailable warrant should be resorted to. He has also submitted that the petitioner may approach before the trial court showing the grounds of his absence during such period before the trial court and may seek regular bail in connection with this case.

I have considered the submissions made by the learned counsel for the parties.

In view of the above, the petitioner is directed to appear before the trial court within 15(fifteen) days from today and in the event of filing any bail application, the same will be considered in accordance with law. Till such appearance of the petitioner before the trial court, the NBWA and P&A issued against him, be kept in abeyance.

The criminal petition stands disposed of accordingly.

JUDGE

Comparing Assistant