

GAHC010074432024



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

Case No. : Crl.Pet./471/2024

GHUTU ALI AND 2 ORS
S/O LATE ABDUL GONI
R/O VILL- GHILAGURI,
P.S. BONGAIGAON
DIST. BONGAIGAON, ASSAM
PIN- 783380

2: SAHARA BEWA @ SOHERA BEWA
W/O LATE ABDUL GONI
R/O VILL- GHILAGURI
P.S. BONGAIGAON
DIST. BONGAIGAON
ASSAM
PIN- 783380

3: SORIFA BEWA
W/O LATE SOLEMAN ALI
R/O VILL- MOHAJHANPARA
P.S. KOKRAJHAR
DIST. KOKRAJHAR
ASSAM
PIN-78337

VERSUS

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

2:UBC/174
KHANDAKAR JAMAL
S/O LATE KHANDAKAR MUBARAK HUSSAIN
BIDYAPUR POLICE OUT POST
UNDER BONGAIGAON POLICE STATION
P.O. BONGAIGAON

PIN-783380
DIST. BONGAIGAON
ASSA

Advocate for the Petitioner : MR. S C BISWAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 24-04-2024

Heard Mr. S.C. Biswas, learned counsel for the petitioners and Ms. S.H. Bora, learned Additional Public Prosecutor for the respondent no. 1, State of Assam.

2. The instant criminal petition under Section 482, Code of Criminal Procedure, 1973 [‘the CrPC’ or ‘the Code’, for short] is preferred to assail an Order dated 21.08.2023 passed by the learned Special Judge, Bongaigaon [‘the trial court’, for short] in Special [P] Case no. 80[BGN]/2023 and other subsequent orders of similar nature.

3. By an Order dated 12.07.2023, the learned trial court took cognizance for the offences under Section 6 and Section 17 of the POCSO Act, 2012 read with Section 9 and Section 10 of the Prohibition of Child Marriage Act, 2006, on submission of a charge-sheet being Charge-Sheet no. 66/2023 dated 30.03.2023, and issued warrant of arrest to secure appearance of the charge-sheeted accused persons on 21.08.2023. On 21.08.2023, a report was submitted by the executing authority seeking further time to execute the warrant. But on 21.08.2023, the learned Special Court issued non-bailable

warrants of arrest against the charge-sheeted accused persons. In the Charge-Sheet dated 30.03.2023, the petitioners have been charge sheeted and in the said charge-sheet, the I.O. of the case had observed that during the course of investigation, the accused persons, that is, the petitioners were found absconding.

4. In view of the nature of issue involved in this petition and the order to be passed, issuance of any notice to the respondent no. 2 is found not necessary.

5. A crime case, Bongaigaon Police Station Case no. 64/2023 came to be registered on the basis of a First Information Report [FIR] lodged on 02.02.2023 by the respondent no. 2 as the informant. The allegations made in the said FIR were inter alia to the effect that one minor girl was forcefully married to one Budhu Ali and the said Budhu Ali was named as the sole accused in the said FIR. By the FIR, legal action was also sought for against the perpetrators who facilitated the alleged child marriage. After completion of investigation, the I.O. of the case submitted a charge-sheet under Section 173[2], CrPC vide Charge-Sheet no. 66/2023 on 30.03.2023 against three accused persons, that is, the petitioners viz. [1] Ghutu Ali, [2] Sahara Bewa and [3] Sarifa Bewa.

6. Mr. Biswas, learned counsel for the petitioners has submitted that though in the charge-sheet, the petitioners were shown as arrested persons, it was also mentioned therein that the petitioners were found evading arrest and there were several attempts to apprehend them. It is his submission that police did not visit the houses of the petitioners at any point of time during the course of investigation and the petitioners had not absconded as they were at their residence. He has contended that the charge-sheet has been submitted with incorrect facts that the petitioners were absconding during the course of

investigation. He has further submitted that without issuing summons at first, the learned trial court had ordered issuance of warrants of arrest on the date of taking cognizance itself and thereafter, without recording any reason after issuance of warrant of arrest, purportedly bailable warrant of arrest, on 12.07.2023, the learned trial court had issued non-bailable warrants of arrest against the petitioners on 21.08.2023 and also by the subsequent orders dated 06.10.2023, 19.12.2023 and 27.02.2024. He has submitted that the petitioners are ready and willing to participate in the trial but because of issuance of non-bailable warrants of arrest on repeated dates they apprehend that in the event they appear before the learned trial court they would be taken into custody.

7. Ms. Bora, learned Additional Public Prosecutor has submitted that an expeditious completion of the trial would better serve the interests of justice since the petitioners have already been charge-sheeted. Considering the fact that the petitioners are ready and willing to participate in the ensuing trial which would facilitate an expeditious completion of trial, interests of justice will be better served if an appropriate order is passed to facilitate their participation in the ensuing trial.

8. I have considered the submissions of the learned counsel for the parties and have gone through the materials on record.

9. Merely for the reason that the I.O. of the case while submitting the charge-sheet had made an observation to the effect that the petitioners, accused persons, that is, against whom a *prima facie* case is found, could not be arrested and they were treated as absconders, they cannot be termed as absconders as such by the learned trial court. Ordinarily, in view of the provisions contained in Chapter VI of the Code, the learned trial court for

securing the appearance of any charge-sheeted accused persons, is obligated to follow the procedure laid down therein, that is, by issuing summons at the first instance. As per the provisions contained in Section 87 of the Code, a Court may, in any case in which it is empowered by the Code to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest— [a] if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or [b] if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

10. The Hon'ble Supreme Court of India in *Inder Mohan Goswami vs. State of Uttaranchal*, reported in [2007] 12 SCC 1, has observed *inter alia* to the effect that the issuance of non-bailable warrant of arrest involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants of arrest. Non-bailable warrant of arrest should be issued to bring a person to court when summons and bailable warrants would be unlikely to have the desired result. The recourse to issuance of non-bailable warrant of arrest should be taken if there is reason to believe that the person will not voluntarily appear in court or if it is found that the person could harm someone if not placed into custody immediately.

11. On perusal of the Orders dated 21.08.2023 and subsequent orders dated 06.10.2023, 19.12.2023 and 27.02.2024, it is found that no reason has been recorded by the learned trial court before resorting to the steps of issuing non-

bailable warrant of arrest to the petitioners, who have been charge-sheeted in Special [P] Case no. 80[BGN]/2023. It is found that the case, Special [P] Case no. 80[BGN]/2023 is posted on 27.05.2024. Since the petitioners have made an undertaking that they are ready and willing to appear before the learned trial court and to participate in the trial for expeditious completion of the trial and the orders, mentioned above, passed by the learned trial court, issuing non-bailable warrants of arrest against them are found to have been passed without following the provisions of Chapter VI of the Code, this Court is of the considered view that in the interests of expeditious and fair trial, the impugned order dated 21.08.2023 and also subsequent orders dated 06.10.2023, 19.12.2023 and 27.02.2024 whereby non-bailable warrants of arrest have been issued against the petitioners, shall be kept in abeyance till 27.05.2024 and quashed.

12. The petitioners are directed to appear before the Court of learned Special Judge, Bongaigaon in Special [P] Case no. 80[BGN]/2023 on or before 10.05.2024 and to apply for regular bail. In the event of filing such an application, the learned trial court shall consider such application for regular bail on its own merits and by taking into consideration the provisions of Chapter VI of the Code. It is further observed that if the petitioners do not appear before the learned trial court on or before the above-stipulated time period, the non-bailable warrants of arrest can be executed.

13. The petition is disposed of in the above terms. No cost.

JUDGE

Comparing Assistant