

GAHC010087212024



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

Case No. : Crl.Pet./511/2024

DIMBESWAR KALITA
S/O SRI BHADRA KALITA
R/O VILL- UDMARI
P.S. JAGIROAD,
DIST. MORIGAON, ASSAM
PIN-782410

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PP, ASSAM

2:SMTI. SUNALI SAIKIA
W/O SRI RATUL SAIKIA
R/O VILL- UDMARI
P.S. JAGIROAD
P.O. DEOSHAL
DIST. MORIGAON
ASSAM
PIN-78241

Advocate for the Petitioner : MR. B BISHAYA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 03-05-2024

Heard Mr. B.K. Gogoi, learned counsel for the petitioner and Ms. A. Begum,

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 is preferred to assail Orders – dated 05.02.2024, dated 06.03.2024 & dated 04.04.2024 – passed by the Court of learned Special Judge [POCSO], Morigaon in POCSO Case no. 128/2021. The petitioner is the sole accused in POCSO Case no. 128/2021 which is presently pending at the trial stage before the Court of learned Special Judge [POCSO], Morigaon [‘the trial court’, for short].

3. The case, POCSO Case no. 128/2021 arose out of a First Information Report [FIR] lodged before the Officer In-Charge, Jagiroad Police Station on 26.02.2021 wherein allegation of rape/penetrative sexual assault was made against the petitioner. On receipt of the FIR, the same was registered as Jagiroad Police Station Case no. 138/2021 for the offence under Section 376[3], Indian Penal Code [IPC]. The I.O. of the case after completion of investigation, submitted a charge sheet under Section 173[2], CrPC vide Charge Sheet no. 248 dated 20.08.2021 finding a *prima facie* case for the offences under Section 376[3], IPC r/w Section 6 of the Protection of Children from Sexual Offences [POCSO] Act, 2012 established against the petitioner. On submission of the charge-sheet, the Court of learned Special Judge [POCSO], Morigaon registered the same as POCSO Case no. 128/2021. By causing production of the petitioner who is the sole accused in POCSO Case no. 128/2021, from judicial custody, the learned trial court framed charges against the petitioner for the offences under Sections 366/376[3], IPC r/w Section 4 of the POCSO Act, 2012. After framing of charges, the trial proceeded with the examination of the prosecution witnesses. In the course of the trial, the accused was extended the benefit of

bail by the learned trial court on 28.12.2021 taking into account the period of detention of the accused till then and on the condition that the accused shall not hamper the trial and make any sort of influence to the remaining witnesses.

4. According to Mr. Gogoi, learned counsel for the petitioner, the accused-petitioner was regularly attending the trial till 05.02.2024. However, on 05.02.2024, the accused-petitioner, due to reasons beyond his control, could not appear before the learned trial court and as a result, the learned trial court issued bailable warrant of arrest [BWA] to secure the presence of the accused-petitioner in the ensuing trial. The Order dated 05.02.2024 was followed by the Order dated 06.03.2024 wherein the learned trial court had observed that the BWA issued against the accused-petitioner had returned with the report that the accused-petitioner was not found at his given address. On 06.03.2024, the learned trial court issued non-bailable warrant of arrest [NBWA] against the accused-petitioner. Subsequently on 04.04.2024, the learned trial court finding that the accused-petitioner did not appear before it and the NBWA issued against him had returned unexecuted with a report that the accused-petitioner was found not available at his given address, issued an order of Proclamation & Attachment [P&A] along with the NBWA against the accused-petitioner. In the above obtaining fact situation, the accused-petitioner has approached this Court by the present petition.

5. Mr. Gogoi, learned counsel for the accused-petitioner has submitted that non-appearance of the accused-petitioner as the accused in POCSO Case no. 128/2021 on the dates 05.02.2024, 06.03.2024 & 04.04.2024 were for reasons beyond his control. Mr. Gogoi has further submitted that the accused-petitioner is ready and willing to participate in the ensuing trial but because of the

issuance of the NBWA and the Order of Proclamation & Attachment [P&A], the accused-petitioner is under apprehension that he might be taken into custody in the interregnum before his appearance before the learned trial court on the next date of listing, that is, 21.05.2024. The learned counsel for the accused-petitioner has, however, not been able to show any irregularity, incorrectness or illegality in the Orders, mentioned above, passed by the learned trial court.

6. Ms. Begum, learned Additional Public Prosecutor has submitted that since the accused-petitioner is ready and willing to participate in the trial by appearing before the learned trial court on 21.05.2024, the interest of justice will be better sub-served if the accused-petitioner is allowed to participate in the trial on and from 21.05.2024. Ms. Begum has further submitted that for the ends of justice, the NBWA and Order of Proclamation & Attachment may be kept in abeyance to allow the accused-petitioner to appear on 21.05.2024 before the learned trial court and to consider his further prayer on its own merits.

7. I have taken note of the submissions advanced by the learned counsel for the parties and have gone through the materials brought on record. The accused-petitioner is facing trial in POCSO Case no. 128/2021 wherein charges under Sections 366/376[3], IPC and Section 4 of the POCSO Act, 2012 have been framed against him. In the ensuing trial, the two prosecution witnesses, P.W.1 and P.W.2 have already been examined. The trial is presently at the stage of further cross-examination of the said two prosecution witnesses, P.W.1 & P.W.2, on re-call.

8. Sub-Section [2] of Section 35 of the POCSO Act, 2012 has a legislative mandate that the Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.

9. From the Orders - dated 05.02.2024, dated 06.03.2024 & dated 04.04.2024, it has not emerged that the accused-petitioner has made any short of influence to the remaining witnesses violating one of the conditions on which the accused-petitioner was granted bail on 28.12.2021. Having regard to the mandate contained in Section 35[2] of the POCSO Act, 2012 which envisages a speedy trial, this Court, notwithstanding absence of any irregularity, incorrectness or illegality in the Orders assailed herein, is of the considered view that appearance of the accused-petitioner before the learned trial court will facilitate expeditious completion of trial. Since the accused-petitioner has undertaken that he is ready and willing to appear before the learned trial court on the next date posted for the trial, that is, on 21.05.2024, this Court deems it fit and proper to extend such a liberty to the accused-petitioner to appear on 21.05.2024 and to prefer appropriate application for recall of the NBWA and the Order of Proclamation & Attachment. It is further observed that if such an application is filed, the learned trial court would consider the same on its own merits and in accordance with law. For the aforesaid purpose, the NBWA and the Order of Proclamation & Attachment issued and passed vide Order dated 06.03.2024 and 04.04.2024 respectively are kept in abeyance till 21.05.2024.

10. The instant criminal petition stands disposed of in the aforesaid terms.

JUDGE

Comparing Assistant