

GAHC010090192024



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

Case No. : Crl.Pet./597/2024

ABDUL SAHJAMAL SEIKH
S/O ABDUL SATTAR, VILL- NEPALI PATTY, P.O. AND P.S.-TEZPUR, DIST-
SONITPUR, ASSAM, PIN-784001

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:MS. RIMJHIM SAIKIA
D/O LATE BOGAI SAIKIA
VILL- MADHUPUR
P.O. AND P.S.-BISWANATH CHARIALI
DIST- BISWANATH
ASSA

Advocate for the Petitioner : MR J ABEDIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

24.05.2024

1. Heard Mr. J. Abedin, learned counsel for the petitioner.
2. The present application under Section 482 of the Code of Criminal Procedure is

filed praying for recalling and / or quashing Non Bailable Warrant of Arrest (NBWA) dated 16.02.2024 and Non Bailable Warrant of Arrest (NBWA) and P/A dated 13.03.2024 issued by the learned Additional Sessions Judge, FTC, Sonitpur, Tezpur against the petitioner, in connection with the Sessions Case No. 173/20222 arising out of Tezpur P.S. Case No. 827/2022 under Sections 419/420/376(2)(m)/323 of IPC.

3. The petitioner is an accused in Sessions Case No. 173/20222 arising out of Tezpur P.S. Case No. 827/2022 under Sections 419/420/376(2)(m)/323 of IPC, which is pending for trial before the learned Court of Additional Sessions Judge, FTC, Sonitpur, Tezpur.
4. Though the petitioner was initially arrested, however, subsequently he was released on bail by the learned trial Court under its order dated 21.10.2022.
5. Subsequently, the petitioner participated in the trial, however, on 16.02.2024, when the matter was fixed before the trial Court, the petitioner was absent without any steps and accordingly, an NBWA was issued against him fixing the matter on 13.03.2024. On 13.03.2024, the warrant was returned unexecuted with a report that the petitioner was not found at his given address and that the petitioner had gone out of station for a work and accordingly, a fresh NBWA was issued and the matter was again fixed on 04.05.2024. On 04.05.2024, the learned trial Court below after considering the long pendency of the case and also the nature and gravity of the case, declared the petitioner as absconder and proclamation was issued.
6. Referring to the statement made in the petition, the learned counsel for the petitioner submits that the petitioner was absent on 16.02.2024 before the learned trial Court below for the reason that as a driver, the petitioner's vehicle was hired and it was under Army duty at Nelia, Jimithang, Tawang, Arunachal Pradesh. However, he informed his engaged counsel and requested to pray for

another date for his appearance before the learned trial Court. However, his engagement counsel did not make such prayer.

7. As regards the date on 13.03.2024, Mr. Abedin, learned counsel for the petitioner submits that the petitioner could not return from Arunachal Pradesh due to landslide on 11.03.2024. It is further submitted by Mr. Abedin, learned counsel for the petitioner that the petitioner had all throughout been present before the learned trial Court inasmuch as whenever, he had some difficulty, he had taken due permission from the court to remain absent and therefore, the petitioner may be allowed to participate in the trial by recalling the NBWA.
8. This Court has given anxious consideration to the submissions made the learned counsel for the petitioner. Also perused the materials available on record.
9. This Court is of the view that the petitioner should approach the learned trial Court below showing the aforesaid reason, which in the considered opinion that the reasons shown are prima facie good reason for recalling of NBWA issued against the petitioner.
10. Accordingly, this Court is of the view that the petitioner should be relegated to the learned trial Court below. Accordingly, it is directed that the petitioner shall appear before the learned trial Court on or before 20.06.2024, with an application for recalling the NBWA/P&A issued against the petitioner. In the event such application is filed, the learned trial Court below shall consider the same in the totality of the matter. Till such application is filed and decision is taken, the NBWA/P&A issued on 16.02.2024 and on 13.03.2024 shall not be given effect to.
11. In view of the aforesaid, this criminal petition stands disposed of.

JUDGE

Comparing Assistant