

GAHC010090382024



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

Case No. : Crl.Rev.P./178/2024

JITEN KARMAKAR
S/O LATE SANATH KARMAKAR, R/O SALAGI TEA ESTATE, P.O.-SALOGI,
P.S.-BAZARICHERRA, DIST- KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. I A TALUKDAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 10.05.2024

Heard Mr. I.A. Talukdar, learned counsel for the petitioner and Mr. B.B. Gogoi, learned Addl. Public Prosecutor for the State respondent.

2. Correctness or otherwise of the order dated 04.03.2024, passed by the learned Special Judge (NDPS), Karimganj in Special (NDPS) Case No. 15/2023, arising out of Bazaricherra P.S. Case No. 50/2023, under Sections 20(b)(ii)

(C)/25/29 of the NDPS Act is challenged in this petition under Sections 397/401, Cr.P.C.

3. It is to be noted here that vide impugned order dated 04.03.2024, the learned Special Judge (NDPS), Karimganj has issued non-bailable warrant of arrest against the petitioner for being shown him as absconder in the charge-sheet.

4. Mr. Talukdar, learned counsel for the petitioner submits that earlier the petitioner was not aware of pendency of any case against him before the learned Special Judge (NDPS), Karimganj. And when he came to know about pendency of a case, he had filed one petition, under Section 438, Cr.P.C. for granting the privilege of pre-arrest bail. But, the learned Court below, vide order dated 07.03.2024, has dismissed the same. Mr. Talukdar further submits that though the petitioner has been shown as absconder in the charge-sheet in Bazaricherra P.S. Case No. 50/2023, and the learned Special Judge (NDPS), Karimganj ought to have issued notice/summon to the petitioner at the very first instance, and the same has been settled by Hon'ble Supreme Court in catena of decisions, but without following that procedure, the learned Special Judge (NDPS), Karimganj has directly issued non-bailable warrant of arrest against him. Mr. Talukdar also submits that the petitioner is ready to face trial and will appear before the learned Court below on each and every date and therefore, it is contended to set aside the impugned order dated 04.03.2024.

5. On the other hand, Mr. Gogoi, learned Additional Public Prosecutor submits that the petitioner was charge-sheeted under Section 20(b)(ii)(C) of the NDPS Act and his anticipatory bail application was also dismissed by the learned Special Judge (NDPS), Karimganj. However, Mr. Gogoi submits that since the non-bailable warrant of arrest was issued at the first instance, the petitioner

may be directed to appear before the learned Court below and till then, the non-bailable warrant of arrest issued against him may be kept in abeyance.

6. Having heard the submissions of learned Advocate of both sides, I have carefully gone through the petition and the documents placed on record and also perused the impugned order dated 04.03.2024.

7. It appears that the petitioner has been shown as absconder in charge-sheet. But, the learned Special Judge (NDPS), Karimganj at the very first instance, has issued non-bailable warrant of arrest against the petitioner for being shown him as absconder in the charge-sheet. It is well settled by a catena of decisions of the Hon'ble Supreme Court that even though the accused may be shown as absconder in the charge-sheet, the Courts have to issue notice/summon to the accused at the very first instance. Reference in this context can be made to a decision of the Hon'ble Supreme Court in **Inder Mohan Goswami and Another vs. State of Uttaranchal and Others**, reported in **(2007) 12 SCC 1**. A detailed guideline has been issued in the aforementioned case in para Nos. 53, 54, 56 and 57 as to when NBWA could be issued, which are read as under:

“When non-bailable warrants should be issued

53. Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when:

- **it is reasonable to believe that the person will not voluntarily appear in court; or**
- **the police authorities are unable to find the person to serve him with a summon; or**
- **it is considered that the person could harm someone if not placed into custody immediately.**

54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued

without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the criminal complaint or FIR has not been filed with an oblique motive.

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56. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straitjacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.

57. The court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non-bailable warrant."

8. And it appears that the aforementioned guidelines have not been followed by the learned Court below. And having tested the impugned order on the touch stone of the aforesaid guidelines, this Court is of the view that the impugned order dated 04.03.2024 has failed to withstand the legal scrutiny and accordingly, the same stands set aside and quashed.

9. The petitioner is directed to appear before the learned Court below on 27.05.2024 and to apply for regular bail and in the event of filing such an application, the learned Court below shall consider the same in accordance with law.

10. In terms of above, this petition stands disposed of in the motion stage itself.

JUDGE

Comparing Assistant