

GAHC010095022024



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

Case No. : Crl.Pet./563/2024

NUR ALOM
S/O ABDUL KARIM
R/O NO. 1 NIZARAPAR, GUWAHATI-20, P.O. AN DP.S. NOONMATI
DIST. KAMRUP (M), ASSAM,
PIN-781020

VERSUS

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

2:AFROZA CHOUDHURY
W/O IMRAN AHMED
R/O SANKAR NAGAR
P.O. AND P.S. NOONMATI
GUWAHATI-78102

Advocate for the Petitioner : MR A H AHMED,
Advocate for the Respondent : PP, ASSAM,

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

23-07-2024

- 1)** Heard Mr. A H Ahmed, learned counsel for the petitioner and Ms. S. Jahan, learned Addl. Public Prosecutor, Assam for opposite party No.1.
- 2)** By this Criminal Petition under Section 482 Cr.P.C. the petitioner, namely, **Nur Alom** has prayed for setting aside the orders of Non-Bailable Warrant of Arrest (NBWA, in

short) dated 19.12.2023 and 29.02.2024 and also the order of Proclamation dated 09.04.2024, all passed against him by the learned Additional Sessions Judge No.1, Kamrup (Metro), Guwahati in Sessions Case No. 36/2019, arising out of Chandmari Police Station Case No.145/2018 under Section 120(B)/302 IPC, corresponding to PRC Case No. 903/2018 (G.R.No.1866/2018).

3) Earlier, the Court on 16.05.2024 issued Notice and called for the scan copy of the Trial Court record.

4) Pursuant to the order dated 18.07.2024 passed earlier in the case, by filing an additional affidavit on 19.07.2024 the petitioner apprised the Court that said Sessions Case No. 36/20 is now fixed on 16.08.2024 before the concerned Trial Court for evidence.

5) From the records it is seen that on 10.03.2018 the petitioner was arrested in connection with said Chandmari PS Case No. 145/2018 along with another accused, namely Krishna Das, wherein after investigation of the case, Police vide No. 86 dated 29.06.2018 filed Charge Sheet against those two accused persons under Section 120(B)/302 IPC.

6) In the said Chandmari PS Case No. 145/2018 the petitioner and the other accused Krishna Das were later released on bail. As Section 302 IPC is exclusively triable by the Court of Sessions, the learned Chief Judicial Magistrate, Kamrup (Metro), Guwahati by its order dated 05.01.2019 passed in said PRC Case No. 903/2018 committed the said case under Section 209 CrPC to the Court of learned Sessions Judge, Kamrup (Metro), Guwahati directing the accused persons to appear before the said Sessions Court on 25.01.2019.

7) On receipt of said PRC Case No. 903/2018 arising out of Chandmari PS Case No. 145/2018, it was registered as Sessions Case No. 36/2019 before the Court of learned Sessions Judge, Kamrup (Metro), Guwahati.

8) By Order dated 25.01.2019 the learned Sessions Judge, Kamrup (Metro), Guwahati transferred the said Sessions Case No. 36/2019 to the Court of learned Additional Sessions Judge No.1, Kamrup (Metro), Guwahati for disposal.

9) On receipt of said Sessions Case No. 36/2019 on transfer, the learned Additional Sessions Judge No.1, Kamrup (Metro), Guwahati on 20.12.2019 framed charge under Section 120(B)/302 IPC against the two accused persons, including the petitioner, where charges

were explained to them, to which they pleaded not guilty and claimed to be tried. Accordingly, the trial of the said Sessions Case began where the learned Trial Court issued summons to the prosecution witnesses for evidence. But due to Covid 19 the said case did not progress much in the year 2020 and 2021.

10) From the records it is seen that the petitioner is not appearing regularly before the Trial Court on the dates fixed for recording of evidence of prosecution witnesses, for which the adjudication of matter is delayed.

11) The petitioner stated that as he is earning his livelihood being a labour and at the relevant period he was away at Shillong, Meghalaya for his work, he could not appear before the learned Trial Court in said Sessions Case No. 36/2019, because of which the orders of NBWA were passed against him on 19.12.2023 and 29.02.2024 and thereafter, due to his such non-appearance, the order of Proclamation was passed on 09.04.2024 against the petitioner and on 09.04.2024 itself the Trial Court filed the said case against him, till his appearance.

12) Petitioner stated that due to some lack of communication between him and his counsel, his counsel could not take steps in the case before the learned Trial Court on the dates fixed.

13) It is also stated by the petitioner that there was no intentional delay on his part but as he was away from the state to earn his livelihood he could not appear in the matter before the learned Trial Court.

14) It is further submitted by the petitioner that he wants to appear in said Sessions Case No. 36/2019 before the learned Additional Sessions Judge No.1, Kamrup (Metro) at Guwahati on the next date fixed, but due to the orders of NBWA dated 19.12.2023 and 29.02.2024 and the order of Proclamation dated 09.04.2024 issued against him by the said Trial Court being in force, and since police are after him due to orders of NBWA, he apprehends that on his such appearance in the case before the Trial Court he will be arrested and detained in custody in the said Sessions case

15) Hence this petition by the petitioner.

16) It is seen from the records that due to such non-appearance in the said case, on

earlier occasion also the Trial Court issued order of NBWA against the petitioner and subsequently on his appearance, the said order of NBWA was recalled.

17) After hearing the learned counsels for the parties and considering the above; this criminal petition is accordingly disposed of directing the petitioner, **Nur Alom**, son of Abdul Karim to appear before the learned Additional Sessions Judge No.1, Kamrup (Metro) at Guwahati in the said Sessions Case No. 36/2019 on its next date, i.e., on **16.08.2024** and thereafter, regularly as and when the said case is fixed.

18) On such appearance of the petitioner before the learned Additional Sessions Judge No.1, Kamrup (Metro) at Guwahati on 16.08.2024 in the said Sessions Case No. 36/2019 and in the event of filing any such bail application and application for recalling the orders of NBWA and the order of Proclamation passed in the said Sessions Case, the concerned Trial Court, shall consider the same in accordance with law, securing the presence of the accused petitioner, **Nur Alom**, in the said Sessions Case on its subsequent dates during its trial.

19) Enabling the petitioner, Nur Alom to appear before the learned Additional Sessions Judge No.1, Kamrup (Metro), Guwahati, in said Sessions Case No. 36/2019 on 16.08.2024, the orders of NBWA and Proclamation, issued against him, in the said Sessions Case, passed earlier on 19.12.2023; 29.02.2024 and 09.04.2024 respectively, shall remain suspended till 16.08.2024 only.

20) However, it is made clear that failure on the part of the petitioner, Nur Alom, to appear in the said Sessions Case No. 36/2019 before the learned Additional Sessions Judge No.1, Kamrup (Metro) at Guwahati, i.e., the concerned Trial Court on 16.08.2024 and thereafter, during the trial on the dates fixed, the concerned Trial Court shall be at liberty to pass any such order, which it deems fit and necessary, securing the presence of the said petitioner in the said Sessions Case No. 36/2019.

21) It is also made clear that the time for appearance of the petitioner, Nur Alom, in the said Sessions Case No. 36/2019 before the learned Additional Sessions Judge No.1, Kamrup (Metro), Guwahati, beyond 16.08.2024 shall not be extended further, as the petitioner is fully aware of the said Sessions Case, the trial of which is pending since

December, 2019.

22) With the aforesaid observation and direction, this criminal petition stands disposed of.

JUDGE

Comparing Assistant