

GAHC010134462024



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

Case No. : Crl.Pet./843/2024

KAPIL DEV CHOUDHURY @ KAPIL DEO CHOUDHARY
S/O MATHURI CHOUDHURY, VILL- GARHI, P.S.-BABUBAHE, DIST-
MADHUBANI (BIHAR)

VERSUS

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

2:SMTI. SUBASHI KARMAKAR
D/O LT. DILIP KARMAKAR
VILL- DOOLAHAT T.E.
BAGAN LINE
P.S.-LALUK
DIST-LAKHIMPU

Advocate for the Petitioner : MR. K K HANDIQUE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 24.07.2024

Heard Mr. K.K. Handique, learned counsel for the petitioner. Also heard
Mr. B. Sarma, learned Additional Public Prosecutor for the State.

This application has been preferred under Section 482 Cr.P.C. against the impugned order dated 20.07.2023 passed by learned Assistant Sessions Judge, Lakhimpur, North Lakhimpur, Assam in connection with Sessions Case No. 172(NL)/2018 (corresponding to GR Case No. 451/2022) under Section 366/342/372/420 IPC, whereby NBWA and P/A issued against the petitioner.

It is submitted by the learned counsel for the petitioner that after framing of charge, summons were issued against the petitioner and he appeared before the learned trial court. Subsequently, he was suffering from some rare disease for which he is not in a position to appear before the learned trial court. Though, his engaged counsel filed a petition seeking adjournment which was rejected by the learned trial court and accordingly NBWA and P/A issued against the petitioner. Under such backdrop, the learned counsel for the petitioner has prayed that the NBWA and P&A be recalled.

On the other hand, Mr. Sarma, learned Additional Public Prosecutor has submitted that in the case *Inder Mohan Goswami & Another vs State Of Uttaranchal & Others*, reported in (2007) 12 SCC 1, the Hon'ble Supreme Court has held that- in complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seems to be avoiding the summons, the court, in the second instance should issue bailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. He has also submitted that the petitioner may approach before the trial court showing the grounds of

his absence during such period before the trial court and may seek regular bail in connection with this case.

I have considered the submissions made by the learned counsel for the parties.

In view of the above, the petitioner is directed to appear before the trial court within 15(fifteen) days from today and in the event of filing any bail application, the same will be considered in accordance with law. Till such appearance of the petitioner before the trial court, the NBWA and P&A issued against him, be kept in abeyance.

The criminal petition stands disposed of accordingly.

JUDGE

Comparing Assistant