

GAHC010246312023



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

Case No. : Crl.Pet./1177/2023

ASHAB UDDIN @ ACHAB UDDIN AND ANR
S/O LATE MANUHAR ALI, R/O VILL-BANIARGOOL (CHUTIAN), P.S. AND
DIST-KARIMGANJ, ASSAM

2: MINOI AHMED @ MINHAI UDDIN @ MONOI @
S/O ABDUL RAHIM
R/O VILL-BANIARGOOL (CHUTIAN)
P.S. AND DIST-KARIMGANJ
ASSA

VERSUS

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

2:FOIJUL AHMED
S/O LATE ABDUL JABBAR
VILL-BANIARGOOL (CHUTIAN)
P.S. AND DIST-KARIMGANJ
ASSA

Advocate for the Petitioner : MR. M A CHOUDHURY
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 11.01.2024

Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Mr. K. K. Parasar, learned Additional Public Prosecutor for the State.

This application under Section 482 of the Code of Criminal Procedure, 1973 read with Section 401 of the said Code read with Article 227 of the Constitution of India has been filed by the petitioners, namely, *1. Ashab Uddin @ Achab Uddin and 2. Minoi Ahmed @ Minhaj Uddin @ Monoi* impugning the order dated 11.07.2023 passed by the learned Sessions Judge, Karimganj whereby Non-bailable Warrant of Arrest were issued against the present petitioners.

It is submitted by the learned counsel for the petitioners that the petitioners in Special Sessions Case No. 14/2022, the charge-sheet was laid against the present petitioners under Sections 342/376/506 of the Indian Penal Code read with Section 4 of the POCSO Act, 2012 and initially by order dated 09.06.2022, the Trial Court had issued summons to the present petitioners, fixing 01.09.2022 for their appearance. On the next date i.e., on 01.09.2022, the petitioners could not remain present and their engaged counsels filed a petition showing cause of their absence and the said petition was allowed and the next date was fixed for appearance of the present petitioners. Ultimately, on a few subsequent dates, the present petitioners could not appear before the Trial Court.

It is submitted by learned counsel for the petitioners that the petitioners could not appear before the Trial Court as they could not arrange the bailer and, therefore, instead of appearing before the Trial Court, they filed an application for adjournment through their engaged counsel. On 10.05.2023 also, the petitioners again failed to appear before the Trial Court and had filed application before the said Court wherein it was mentioned that the petitioners could not arrange the bailer and, therefore, another date was prayed for their appearance. However, the Trial Court rejected the prayer and issued Non-bailable Warrant of Arrest, fixing 11.07.2023 for their appearance. Thereafter, on 11.07.2023, the

Trial Court had issued proclamation and attachment order against the present petitioners.

Learned counsel for the petitioners has submitted that as the counsel for the petitioners had filed on behalf of the present petitioners before the Trial Court, the Trial Court should not have issued proclamation order as before issuing such proclamation order, the Trial Court ought to have arrived at a satisfaction that the petitioners have absconded or concealing themselves so that the Warrant of Arrest issued against may not be executed, whereas at that point of time, it is submitted that the bail petition filed by the present petitioners was pending before the Trial Court.

It is further submitted by the learned counsel for the present petitioners that the present petitioners are ready to face trial as they have now arranged their bailer and they are ready to appear before the Trial Court and cooperate in the trial and, therefore, have prayed to convert the pending Non-bailable Warrant of Arrest issued against them into Bailable Warrant of Arrest and in support of the said submissions, learned counsel for the petitioners have cited a judgment of a Co-ordinate Bench of this Court in Criminal Petition No. 654/2017 which was decided on 17.07.2018 wherein under similar circumstances the pending Non-bailable Warrant of Arrest issued against the present petitioners were directed to be treated as Bailable Warrant of Arrest.

Learned Additional Public Prosecutor, on the other hand, has submitted that from record it appears that the petitioners without any just cause failed to appear before the Trial Court in spite of receipt of summons by them on the several consecutive dates and they were also shown as an absconder in the charge-sheet.

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

Though, from the copies of the petitions filed by the present petitioners before the Trial Court, it appears that they had mentioned therein that they had failed to procure bailer for which they did not appear before the Trial Court on the date fixed. However, it also appears that the petitioners had engaged counsel to appear before the Trial Court and filed petition showing cause of their absence before the Trial Court and this does not appears to be a case where the petitioners have willfully defied the summons issued by the Trial Court. Further, considering the fact that the petitioners are ready to face the trial and cooperate in their trial, this criminal petition is hereby disposed of with a direction to the above named petitioners to appear before the Court of learned Sessions Judge, Karimganj within a period of fifteen days from the date of this order and to cooperate in the trial and to facilitate such appearance of the petitioners before the Trial Court, the Non-bailable Warrant of Arrest issued by the Trial Court against them shall be treated as Bailable Warrant of Arrest of Rs.10,000/- (Rupees Ten Thousand) each. After appearing before the Trial Court, the petitioners may make prayer before that Court for any other appropriate relief, if so advised.

With the above observations, this criminal petition is hereby disposed of.

JUDGE

Comparing Assistant