

GAHC010254862018



2024:GAU-AS:11903

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

Case No. : Crl.Pet./1154/2018

SAHIDUR RAHMAN
S/O. MD. WAHIDUR RAHMAN, R/O. RAJABARIGAON, P.O. RAJABARI, P.S.
BORHULA, DIST. JORHAT, ASSAM.

VERSUS

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

2:KESHAB BORA

S/O. LT. BONAI BORA
R/O. VILL. AND P.S. MAJPATHORI
P.S. SADAR
DIST. NAGAON
ASSAM

Advocate for the Petitioner : MR S M T CHISTIE, MS A M DCOSTA,MR. S HAZARIKA,MR B KAUSHIK,MR. S BORA

Advocate for the Respondent : PP, ASSAM, MR. S K DAS

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 29.11.2024

1. Heard Mr. S Bora learned counsel for the petitioner. Also

heard Mr. K Baishya, learned Addl. PP, appearing for the respondent No.1. None appears for the respondent No.2.

2. The present application is filed assailing order(s) dated 16.12.2010, 24.06.2015 and 19.09.2015. By the order dated 16.12.2010, Non Bailable Warrant of Arrest (NBWA) was issued against the petitioner, who is an accused in Sessions Case No.86/2009 and by order dated 24.06.2015, P&A (Proclamation & Attachment) was issued against the present petitioner. Another order under challenge is the order dated 19.09.2015 declaring him as proclaimed offender.

3. The prosecution was initiated on the basis of an FIR lodged by the respondent No.2 alleging that on 21.03.2009, his minor daughter aged about 17 years was found missing from his residence and after enquiry, he could learn that at around 11.00 PM his daughter was kidnapped from the courtyard of his house by the accused/petitioner.

4. Accordingly investigation was started and victim was recovered from the residence of the petitioner. The statement of the victim was recorded under section 161 Cr.P.C and having found materials, the Investigating Officer submitted charge sheet in GR Case No.49/2009.

5. The matter being triable by the Court of Sessions, the same was committed to the court of Sessions and Sessions Case No.86/2009 was registered, which is pending for adjudication before the learned Addl. Sessions Judge No.1, Nagaon.

6. Though the petitioner initially appeared before the learned trial court on 24.08.2010, however, subsequently he defaulted and accordingly in the aforesaid backdrop, the impugned order(s) were

passed.

7. It is the contention of the learned counsel for the petitioner that the petitioner did not appear as an agreement was entered with the informant that he will not pursue the case. It is on record that the respondent No.2 i.e., the informant has also filed an affidavit in this proceeding and contended that the FIR was of the year 2009 and his daughter has in the meantime got married in the year 2011 and presently living a peaceful married life and the accused has never disturbed the informant, his family members or his daughter after the incident and therefore, he is not inclined to pursue this matter.

8. Be that as it may, this court is not inclined to enter into the merit of such contention, inasmuch as, taking note of the fact that the petitioner was under misunderstanding that the case is not proceeding against him in view of the stand of the informant, this court is inclined to dispose of this criminal petition with a liberty to the petitioner to approach the learned Addl. Sessions Judge taking all grounds available to him for non appearance during the trial and in the event such application is filed, the learned trial court shall consider the case for recall of the NBWA as well as the proclamation, on its own merit, without being influenced by any of the observations made by this court and taking note of the attending facts of the case that may be presented by the accused/petitioner.

9. Accordingly it is provided that the accused petitioner shall appear before the learned trial court within 12.12.2024 and file necessary application in this regard.

10. Till such application is decided, the NBWA issued earlier and

the order dated 19.09.2015 declaring him as proclaimed offender shall remain suspended.

11. The LCR be returned back forthwith.

JUDGE

Comparing Assistant