

GAHC010100152022



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

Case No. : Crl.Rev.P./256/2022

SADDAM HUSSAIN
S/O LATE SABED ALI
VILL- ALOPATI
P.S. ALOPATI
DIST. BARPETA, ASSAM
PIN-781127

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A R SIKDAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 31-05-2022

Legality, propriety and correctness of the order dated 05.03.2022 and the order dated 26.04.2022 passed by the learned Additional Session Judge- Cum-Special Judge, POCSO Act, Barpeta, in special POCSO Case No. 59/2022, is put

to challenge in this petition under Sections 397/401 read with Section 482 Cr.P.C. and Article 227 of the Constitution of India.

2. It is to be noted here that vide impugned order dated 05.03.2022, the learned Additional Session Judge-Cum-Special Judge, POCSO, Barpeta, had issued non-bailable warrant of arrest against the petitioner on the very 1st occasion, without issuing any summon to him and vide impugned Order dated 26.04.2022, the learned Additional Session Judge-Cum-Special Judge, Barpeta had issued fresh non-bailable warrant of arrest against the petitioner without issuing any summon to him.

3. Heard Mr. A. Ali, learned counsel for the petitioner. Also heard Mr. B. Sharma, learned Addl. Public Prosecutor for the State/respondent.

4. Mr. A. Ali, the learned counsel for the petitioner submits that the petitioner, namely, Saddam Hussain has been charge-sheeted in Alopatis P.S. Case No. 8/2020, U/S 366(A)/34 IPC read with Section 4 of POCSO Act, 2012, but the learned Court below without issuing summon and taking recourse to other available remedies, had issued non-bailable warrant of arrest at the very first instance and as such, both the impugned orders suffers from manifest illegalities and therefore, it is contended to allow the petition.

5. Mr. B. Sharma, learned Addl. Public Prosecutor also fairly submits that the learned Court below has issued non-bailable warrant of arrest at the very first instance and without exhausting the alternate remedies available.

6. The legal proposition, in respect of issuance of non-bailable warrant of arrest, has already been settled by Hon'ble Supreme Court in catena of

decisions.

7. In the case of **Vikas Vs. State of Rajasthan, Criminal Appeal No. 1190/2013, arising out of Special Writ Petition (Crl.) No. 6081/2013,** Hon'ble Supreme Court has held that the Constitution, on one hand, guarantees the Right to Life and Liberty to its citizens under Article 21 and on the other hand imposes a duty and an obligation on the Judges while discharging their judicial function to protect and promote the liberty of the citizens. The issuance of non-bailable warrant in the first instance, without using the other tools of summons and bailable warrant to secure attendance of such a person would impair the personal liberty guaranteed to every citizen under the Constitution. This position is settled in the case of Inder Mohan Goswami Vs. State of Uttaranchal; (2007) 12 SCC 1, and also in the case of Raghuvansh Dewanchand Bhasin vs. State of Maharashtra and Anr; (2012) 9 SCC 791, wherein it has been observed that personal liberty and the interest of the State Civilized countries is the most precious of all the human rights. It is further held that the issuance of non-bailable warrant involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, this demands that the courts have to be extremely careful before issuing non-bailable warrants.

8. Here in this case, having gone through the impugned Orders 05.03.2022 and the order dated 26.04.2022 passed by the learned Additional Session Judge-Cum-Special Judge, POCSO Act, Barpeta, in special POCSO Case No. 59/2022, I find reveals that without taking recourse to other available remedies, the learned Court below has issued non-bailable warrant of arrest at the very first instance which is not at all permissible.

9. Thus, having tested the impugned Orders on the touchstone of the principle discussed herein above, this Court is of the view that both the impugned orders failed to withstand the test of legality, propriety and correctness.

10. The learned counsel for the petitioner submits that the petitioner is ready to participate in the trial and therefore, it is contended to recall the warrant of arrest issued against him.

11. Accordingly, it is provided that the petitioners shall appear before the learned Court below within 15 days from today and on his appearance and filing a petition for granting regular bail, the learned Court below shall consider the same in accordance with law.

12. Till then warrant of arrest issued against the petitioner stands recalled.

13. In terms of above, this Criminal Revision Petition stands disposed of at this motion stage itself.

JUDGE

Comparing Assistant