

GAHC010030652024



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

**Case No. : AB/346/2024**

PABITRA KAMAN @ KAPOW  
SON OF LATE JAPAN KAMAN VILL BALIGAON  
P.S. GOHPUR  
DIST BISWANATH ASSAM

VERSUS

THE STATE OF ASSAM  
THROUGH THE PUBLIC PROSECUTOR, ASSAM

**Advocate for the Petitioner : MR. A DUTTA**

**Advocate for the Respondent : SPECIAL PP ASSAM**

**BEFORE  
HONOURABLE MRS. JUSTICE MALASRI NANDI**

**ORDER**

**Date : 21.03.2024**

Heard Mr. A. Dutta, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Special Standing counsel, Wildlife.

2. This is the third bail application filed under **Section 438 Cr.P.C.**, praying

for pre-arrest bail by the petitioner, namely, **Pabitra Kaman @ Kapow**, who is apprehending arrest in connection with **C.R.(Forest) Case No. 02/2019**, registered under **Section 2(16)/2(35)/9/27/31/39/40/43/50/52 r/w Section 51 of Wildlife (Protection) Act, 1972** pending in the court of JMFC, Bokakhat.

3. The brief fact of the case is that an officer of Eastern Range, Kaziranga National Park, filed a written complaint before the SDJM, Bokakhat alleging inter alia that four persons were seen entering into the Tamulipathar area without any authority. Accordingly, a forest team was moved to that area but due to darkness and thick forest, search could not be conducted though they heard sounds of two rounds of firing. On the next day, a dead rhino was found in the south bank of Dhansiri river and horn of rhino was taken away by the poacher. Subsequently, five persons were arrested and they had confessed their involvement during interrogation.

4. After investigation into the matter, the investigating officer submitted the offence report, wherein the present petitioner was shown as absconder. Thereafter, the learned Magistrate took cognizance of the offences vide order dated 16.05.2019 and warrant of arrest was issued. As the police has failed to arrest the accused, proclamation was issued against the petitioner along with warrant of arrest. Subsequently, on 13.12.2023, the petitioner did not appear before the learned trial court for which re-issued proclamation against him through the Superintendent of Police, Biswanath District.

5. It was urged by the learned counsel for the petitioner that on receipt of the offence report, while taking cognizance by the learned Magistrate, issued warrant of arrest at the first instance against the petitioner and thereafter on

several occasions, warrant of arrest was issued against him. By referring the judgment of this Court, reported in (2008) 1 GLT 979 (Nazrul Islam vs. State of Assam), the learned counsel for the petitioner has pointed out that in the said judgment, this Court held that- "before issuing proclamation against an accused, the mandate of section 82 is that the court must have 'reasons to believe' that the person against whom the warrant has been issued has absconded or concealed himself so that the warrant cannot be executed. Only upon arriving at such a satisfaction, the court is empowered to issue such proclamation under Section 82 Cr.P.C. Law provides for issue of proclamation against an absconder only. Accordingly, it is necessary to examine when an accused can be said to be an absconder. In order to issue a proclamation under Section 82 Cr.P.C. it is sine-qua-non that court must have reason to believe that the person against whom proclamation has been issued "absconded" or is 'concealing himself' so that such warrant cannot be executed and only on arriving at such a satisfaction, the court concerned is authorized to publish such proclamation"

6. It is also the submission of learned counsel for the petitioner that the petitioner has been wrongly shown as absconder in the charge-sheet submitted by the investigating officer as he is a permanent resident under Gohpur police station living with his family. The police or the forest official never visited his house to arrest or interrogate him and he is always available in the address given in the offence report.

7. Learned counsel for the petitioner also has submitted that the petitioner is an innocent person and he has not committed any such offence as alleged in the FIR. The allegation levelled against him are false and fabricated. He is ready to face the trial to prove his innocence. Considering the background

of the case, the privilege of pre-arrest bail may be extended.

8. Per contra, Mr. B. Sarma, learned Special Standing counsel, Wildlife submits that the petitioner along with some other persons were involved in killing of rhino which covers schedule 1 of Wildlife Protection Act, 1972. He further submits that the record would reveal that the arrested co-accused have themselves made statement under Section 50(8) (b) of Wildlife Protection Act, 1972 admitting their involvement. Accordingly, learned Standing counsel, Wildlife has prayed for dismissal of the bail application.

9. On perusal of trial court record, it reveals that offence report has been submitted against nine accused persons out of which seven accused were arrested during investigation. The present petitioner and the other co-accused Ranjit Pegu were not available during investigation and they were shown as absconders in the offence report. The trial Magistrate after taking cognizance on 16.05.2019 has passed order which reads as follows-

“It appears from the offence report that accused, Pabitra Kaman @ Kapaow and Ranjit Pegu have been shown as absconder. Therefore, in order to compel their production, I deem it fit to issue warrant of arrest in lieu of summons as per Section 87 of Cr.P.C.”

10. From the order of learned Magistrate dated 16.05.2019, it cannot be said that there is no ground shown by the Magistrate to issue warrant of arrest against the petitioner in the first instance instead of summons. It is true that as per section 82 and 83 Cr.P.C., the court must record its reason to believe for taking such action and it must also satisfy about the absconcence of the accused as well as about the dealing with his property as per section 83 Cr.P.C.

and without such compliance, the issuance of such order for proclamation and attachment cannot be said to have done in valid exercise of power.

11. From the record, it reveals that warrant of arrest was issued in the year 2019. But the police has failed to execute the warrant of arrest. It was reported by the executing police officer that the accused petitioner is not available in the address given in the warrant of arrest. After accepting the report, proclamation was issued.

12. It also appears from trial court record that though bail was earlier granted to the co-accused, but subsequently they have been defaulted. As a result of which the case is at the stage of appearance for last five years. According to learned Special Standing counsel, Wildlife, this case relates to killing of rhino which is a serious offence. If pre-arrest bail is granted to the petitioner, it will be a travesty of justice that after committing such a grave offence, pre-arrest bail is granted to the petitioner.

13. On scrutiny of trial court record, it reveals that during investigation, the investigating forest officer unearthed the facts and circumstances leading to the death of a rhino and commission of theft of its horn. It also reveals that the accused/petitioner and other co-accused in a preplanned manner killed the rhino inside Kajiranga National Park for financial benefit. It is a serious act of rhino poaching by a gang of poachers inside Kajiranga National Park. Knowing the fact of pending case in the court, the petitioner is wilfully avoiding to appear before the court for which proceeding of the case is delayed.

14. Under such backdrop, the petitioner is directed to surrender before the trial court and if any bail application is moved, which shall be considered by

the trial court in accordance with law. However, bail application is rejected.

15. The pre-arrest bail application stands disposed of.

**JUDGE**

**Comparing Assistant**