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**(2014) 04 GAU CK 0020**

**Gauhati High Court**

**Case No:** Crl. Pet. No. 226 of 2014

Mozeb Uddin Mazumder

APPELLANT

Vs

State of Assam

RESPONDENT

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**Date of Decision:** April 2, 2014

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482, 87
- Penal Code, 1860 (IPC) - Section 376, 406, 420

**Citation:** (2014) 2 GLT 713

**Hon'ble Judges:** B.D. Agarwal, J

**Bench:** Single Bench

**Advocate:** M.J. Quadir, Learned Counsel, Advocate for the Appellant; K. Munir, learned Addl. PP, Advocate for the Respondent

**Final Decision:** Disposed Off

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### **Judgement**

B.D. Agarwal, J.

This criminal petition u/s 482 of the Criminal Procedure Code has been filed by the against the order dated 7.2.2014 passed by the learned J.M.F.C., Hailakandi in GR Case No. 1011 of 2013 under Sections 420/376/406 of the IPC. By this impugned order the learned Magistrate has issued warrant of arrest against the accused. Heard Mr. MJ Quadir, learned counsel for the petitioner and Mr. K. Munir, learned Addl. PP, Assam for the State. Also perused the charge sheet and the impugned orders.

2. It is true that the learned Judicial Magistrates have discretion to issue warrant of arrest in lieu of summon u/s 87 of the Criminal Procedure Code, 1973 after recording its reasons. In the present case, the learned Magistrate has recorded in the order dated 7.2.2014 that as per the case diary entry dated 31.1.2014 many attempts were made to arrest the accused prior to filing of the charge sheet. Incidentally, 31.1.2014 is the date of charge sheet. In my considered opinion, there

should have been case diary entries prior to the filing of the charge-sheet. This apart, the charge-sheet does not indicate as to how on many occasions the house of the accused was visited and in whose presence.

3. The above apart, I hold that it is improper for the Investigating Officer to declare an accused person absconder without following the procedure prescribed under Chapter VI-Code of the Criminal Procedure Code, 1973. The Chief Judicial Magistrate should emphasis upon the Investigating Officers to first adopt the procedure prescribed under the said Chapter before filing of the charge-sheet, showing the accused persons as absconders. In this way, the duty of the investigating agency to arrest the accused persons is shifted upon the judiciary, which is not in conformity with law. Such practice should be discouraged by the Judicial Magistrates.

4. For the forgoing reasons the impugned order is hereby set aside, subject to the condition that the accused shall appear before the trial court on 5.4.2014 and pray for regular bail. If the accused appears in the next week the prayer for regular bail shall be considered in accordance with law without being influenced by the observations made in this order.

5. The Registry is directed to forward a copy of this order to the Director General of Police, Assam for issuing necessary guidelines to the Investigating Officers. The Registry is further directed to circulate a copy of this order to all the Judicial Officers. With the aforesaid directions the criminal petition stands disposed of.