GAHC040014712026

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

Case No. : Crl.Petn./271/2026

Smti Attar Natung
Wife of Badal Natung, resident of Village Sede, PO and PS Pijirang, Pakke Kessang District, Arunachal Pradesh and present resident of Doni Polo Colony Itanagar.

VERSUS

The State of AP
represented through its Public Prosecutor

Advocate for the Petitioner : Minjum Kamcham, Hage Tai,Tailang Laji

Advocate for the Respondent : P P of AP,

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

Date : 09.10.2026

Heard Mr. M. Kamcham, learned counsel for the petitioner. Also Mr. T. Ete, learned Additional Public Prosecutor for the State of Arunachal Pradesh.

[2.] The petitioner by filing this application under Section 528 of the BNSS, 2023, read with Section 483 of the BNSS, 2023, prays for quashing

and setting aside the impugned orders dated 22.01.2026 and 08.06.2026 passed by the Court of learned Special Judge, NDPS, Yupia, Papum Pare, Arunachal Pradesh in NDPS Case No. 69/2023, which corresponds to Itanagar P.S. Case No. 122/2023, and for the release of the accused person on previous bail granted to him vide order dated 17.01.2024.

[3.] The learned counsel for the petitioner submits that the petitioner had been regularly appearing before the learned trial court as and when he is required to do so and that even on 22.01.2026, the petitioner was present within the court premises and was waiting for his case to be called up. However, while he briefly went out to answer nature's call, his case was called out and the petitioner being unaware about the same, waited for his case to be called out. Later on, he was informed that his case had already been called and since he did not turn up, the learned Trial Court directed issuance of a non-bailable warrant of arrest (NBWA) against him.

[4.] It is further submitted that, while issuing the non-bailable warrant of arrest, the learned Trial Court fixed 08.06.2026 as the next date for the appearance of the accused and examination of the prosecution witnesses. The petitioner appeared before the learned Trial Court on 08.06.2026 but the learned Trial Court by observing that the petitioner had not taken any steps for recalling the non-bailable warrant of arrest NBWA, directed that he be taken into custody of the Court and be remanded to judicial custody at Jully Jail**,** with a further direction to produce him again on 22.06.2026.

[5.] The learned counsel for the petitioner submits that the learned Trial Court, without cancelling the earlier bail and without fulfilling the bail bond directed that the petitioner be taken into custody and remanded to judicial custody without affording any opportunity. The learned counsel for the

petitioner further submits that the learned Trial Court ought to have afforded the petitioner an opportunity to explain the circumstances that led to his absence when the matter was called on 22.01.2026, before directing the issuance of a NBWA against him.

[6.] The learned counsel for the petitioner, referring to Section 90 of the BNSS, 2023, submits that the Court may at the first instance issue a summon for the appearance of the person and following hisnon-appearance, the Court may issue a warrant after recording reasons in writing for issuance of the same. Such step can be taken if the Court finds reason to believe that the accused person has absconded and will not obey the summon issued to him and therefore, issue a warrant of his arrest, either before issuance of the summon or after the issuance of the summon.

[7.] In the present case, learned counsel submits that the learned Trial Court had recorded no reasons for issuance of NBWA in its order dated 22.01.2026. Therefore, the impugned order is bad in law and the consequential order passed on 08.06.2026 also cannot be sustained since the petitioner was not given any opportunity to explain as to why he had not appeared before the Court on 22.01.2026 prior to sending him to judicial custody and that too, without cancellation/forfeiting the bail bond that was executed.

[8.] Learned counsel further submits that Section 92 of the BNSS, 2023, provides that the person who is bound by any bond or bail bond to appear before the Court does not appear, the Court may issue a warrant for the arrest of such person and direct his production before the Court. Even in this regard the learned counsel submits that on the appearance of the

accused person and before he issent to judicial custody, an opportunity is to be given to him to explain as to why he had not appeared and it is only when such explanation is found to be not satisfactory by the Court that the Court by recording reasons in writing and giving a finding that the bond has been forfeited, direct his detention in judicial custody.

[9.] In this connection, the learned counsel for the petitioner has relied upon the case of *Pilliappan v. State represented by the Inspector of Police* reported in *2018 SCC OnLine Mad 13298*.

[10.] The learned counsel, thus, submits that under the facts and circumstances of the case, the manner in which the NBWA was issued and the petitionersent to judicial custody notbeing in compliance with the provisions of BNSS, the impugned orders therefore should be set aside and petitioner allowed to remain on bail in terms of the bail granted to him earlier vide Order dated 17.01.2024.

[11.] Mr. T. Ete, learned Additional Public Prosecutor appearing for the State of Arunachal Pradesh submits that contention of the petitioner that he was present on the day when the matter was fixed i.e. 22.01.2026 and that he had just gone to answer nature's call is an explanation which is not borne from the records. He submits that it was the duty of the petitioner to report and get his attendance recorded while waiting for his case to be called out. He having failed to do so, it was only justified for the Court in such a situation to record his absence. The learned Additional Public Prosecutor, however, submits that the manner in which the NBWA was issued on 22.01.2026 apparently is notin conformity with the requirements of Sections 90 and 92 of the BNSS, 2023 and therefore,

considering the prerequisites defined there under, Court may consider and pass necessary orders as it deems fit and proper.

[12.] I have heard the submissions made by the learned counsel for the rival parties and perused the materials available on records. Upon doing so, it appears that the petitioner had been granted bail vide order dated 17.01.2024, by the learned Trial Court in Bail Application No. 02/2024 in connection with NDPS Case No. 69/2023. During the trial, on 22.01.2026, the Trial Court upon finding the petitioner to be absent when the matter was called, directed the issuance of a NBWA against him while fixing 08.06.2026 as the next date.When the matter was taken up on 08.06.2026, the learned Trial Court observed that as no steps had been taken by the accused person regarding the pending warrant of arrest, directed that he be taken into custody and remanded to judicial custody at Jully Jail with a further direction to produce him before the Court on the next date fixed.

[13.] A perusal of the aforesaid orders indicates that the learned Trial Court did not afford the petitioner any opportunity to explain as to why he was absent on 22.01.2026 before directing that he be taken into custody. Similarly, the order dated 22.01.2026 does not disclose any reasons as to why the Court found it necessary to issue a NBWA.

[14.] Section 90 of the BNSS may be abstracted hereunder for ready perusal: -

> "**90. Issue of warrant in lieu of, or in addition to, summons.**-A Court may, in any case in which it is empowered by this Sanhita to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest-

(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure."

[15.] From the above abstract, it may be seen that the court is indeed empowered to issue warrant of arrest to secure the presence of accused person but such a step has to be resorted only if the court finds that the issuance of summon or summons for appearance of the accused would not be effective and there was likely for him or her to abscond. Further, the issuance of such warrant of arrest has to be preceded by the satisfaction of the court that it was necessary to do so for reasons which are to be recorded in writing. It is only then that the court would be justified in issuing a warrant of arrest of the accused person for having not appeared before the court.

[16.] The Apex Court in the case of ***Inder Mohan Goswami and Another vs. State of Uttaranchal and Others*** reported in ***(2007) 12 SCC 1***, in the given facts of the case held that the issuance of NBWA involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, courts have to be extremely careful before issuing the NBWA. Just as liberty is precious for an individual so is the interest of society in maintaining law and order. Both are extremely important for the survival of a civilised society. Sometimes in the larger interest of the public and the State, it becomes absolutely imperative to curtail freedom of an individual for a

certain period, only then the NBWA should be issued. Further, NBWA should only be issued to bring a person to court when the summons or bailable warrants are unlikely to have the desired results. This could be when it is reasonably believed that the person will not voluntarily appear before the court or the police authorities are unable find the person in order to serve him with a summon or it is considered that the person could harm someone if not placed under custody immediately. The court thus held that as far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable nor non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due the extremely serious consequence and ramification which ensues on issuance of such warrants.

[17.] The Apex Court also held that the power to issue non-bailable warrants being discretionary, it must be exercised judiciously and with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straitjacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous nature and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.

[18.] The Madras High Court, in ***Pilliappan(Supra)*** under the given facts of that case held that in the event the accused person does not appear on the hearing date and no petition is filed for dispensing with his

presence, a NBWA can be issued. On production of the accused by the police, an opportunity is required to be afforded to him to explain why he failed to appear before the Court. If the accused furnishes a satisfactory explanation, the Court may recall the warrant and release him. On the other hand, if the explanation is found to be unsatisfactory, the Court is required to record its reasons and arrive at a finding that the bail bond has been forfeited and upon such a finding, the bail bond gets automatically cancelled. The Magistrate cannot release the accused on his own bond in view of the statutory bar under Section 446A (Section 492 of the BNSS). However, the accused may be released in accordance with the proviso to Section 446-A(b)(Section 492(b) of the BNSS).

[19.] In the present case, as can be noticed hereinabove, while issuing a NBWA against the petitioner to secure his presence vide dated 22.01.2026, the learned Trial Court thereafter vide order dated 08.06.2026, directed that petitioner be taken into custody. However, no reasons have been recorded as to why the issuance of a NBWA was found to be necessary or why the petitioner's explanation, if any, was found insufficient to recall the warrant and permit him to continue on bail.

[20.] Viewed from the aforesaid perspective, this Court is of the opinion that the impugned orders dated 22.01.2026 and 08.06.2026 cannot be sustained in the absence of a reasoned finding for issuance of a NBWA and for forfeiture of the bail bond in accordance with the applicable provisions of law.

[21.] Consequently, the impugned Orders dated 22.01.2026 and 08.06.2026 are set aside and the petitioner directed to be released. The petitioner in his release shall be allowed to remain on bail in terms of the

earlier order dated 17.02.2026 passed in Bail Application No. 02/2026.

[22.] It is submitted at the bar that the next date fixed by the learned Trial Court is 10.11.2026 and therefore the petitioner shall ensure that he appears before the learned Court on the said date without fail and he shall continue to abide by the conditions imposed under the earlier bail order and appear before the learned Trial Court as and when he is required to do so.

[23.] With the above observation and direction, the criminal petition stands disposed of.

JUDGE

CHECKED & VERIFIED

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