GAHC040014562026

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

Case No. : BA/88/2026

Bowie Doley
Son of Shri Biren Doley, a resident of Chandranagar, PO RK Mission, PS Itanagar, Papum Pare District, Arunachal Pradesh.

VERSUS

The State of AP
represented by the PP of AP

Advocate for the Petitioner : Tabit Tapak, T Tabing,Bebeng Siboh,Aso Dalbong

Advocate for the Respondent : P P of AP,

Linked Case : Crl.Petn./316/2026

Bowle Doley
Age: 35
Occupation :
Address:Son of Shri Biren Doley
resident of Chandranagar
PO RK Mission
PS Itanagar
Papum Pare District
Arunachal Pradesh.

VERSUS

The State of AP
Age: 0

Occupation :
Address:represented by the PP of AP

Advocate for : Tabit Tapak
Advocate for : P P of AP appearing for The State of AP: Advocate appearing for respectively.

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

Date : 09.10.2026

Heard Mr. T. Tapak, learned counsel for the petitioner. Also heard Ms L. Hage, learned Additional Public Prosecutor for the State. Having regard to the nature of the case projected by the petitioner in the bail application and in the criminal petition to be common, they are taken up together for disposal.

2. By filing the criminal petition No.316(AP)/2026, the petitioner has sought for quashing and setting aside of the bail rejection order dated 24.08.2026 passed by the Special Judge, NDPS, Yupia in NDPS Case No.45/2024 arising out of Itanagar P.S. Case No.228/2022. The petitioner also by filing the bail application No.88(AP)/2026 has prayed for his release in connection with the same case as he was re-arrested and detained in judicial custody since 13.08.2026.

3. The factual matrix projected by the petitioner in the criminal petition is that he was arrested in connection with Itanagar P.S. Case No.228/2022 registered under Section 21(b)/27A of the NDPS Act, 1985 on 10.09.2022 along with another co-accused person by Anti-Drug Squad, ICR on the

suspicion of peddling Narcotic drugs. It is the case of the prosecution that 5.210 grams of suspected heroin was recovered and for which reason, the arrest had been made. The petitioner filed bail application No.237/2022 before the court of Special Judge, NDPS, Yupia and the learned trial court vide order dated 18.10.2022, released him on bail on the following conditions: -

i) Accused shall execute bail bond of Rs. 10,000/- with like amount of one sound surety and be released from judicial custody, if not required or wanted in other criminal cases.

ii) Accused shall appear before the I.O as and when required.

iii) Accused shall not attempt to influence, intimidate or coerce any person acquainted with the facts of the case and willing to give evidence against him in the court.

4. With the above conditions, the petitioner was enlarged on bail. After filing of the charge sheet, trial began, then various dates were fixed for examination of the prosecution witnesses. On 10.03.2026, when the matter was listed before the court of Special Judge, NDPS, Yupia, the petitioner appeared along with his defence counsel and the court after acknowledging his presence, directed issuance of fresh summon to 2(two) prosecution witnesses while fixing 16.07.2026 as the next date for appearance and for examination of the prosecution witnesses. On 16.07.2026, when the matter was listed before the trial court, the petitioner was found to be absent without any steps and accordingly, the learned trial court directed issuance of Non-Bailable Warrant of Arrest

(NBWA) with notice to his bailor and fixing 09.09.2026 for appearance/production of the accused person.

5. The learned counsel for the petitioner submits that on 16.07.2026, the petitioner could not appear before the trial court on the account of his illness and his medical condition. His absence was neither intentional nor deliberate and that he did not have the intention to evade the process of law. However, without giving the petitioner any opportunity, the learned trial court immediately issued NBWA without recording any grounds for coming to the conclusion that there was a ground for issuance of the same. The learned counsel submits that the manner in which NBWA was issued, in fact, is only in violation of Section 90 of BNSS, 2023.

6. Referring to the aforesaid provision, the learned counsel submits that the learned trial court ought to have issued a summon for appearance of the petitioner. Further, if the court found the reason to believe that the petitioner has absconded and that he will not obey the summons, the court under the circumstance, after recording the reason in writing, can issue a warrant of his arrest. However, without adopting such procedure, the learned trial court at the very first instance of none appearance of the petitioner has issued NBWA and that too without recalling any reasons. The learned counsel submits that the petitioner has been regularly appearing before the learned trial court as and when he is required to do so and this was the only instance where he could not appear before the court on the account of his illness.

7. The learned counsel further submits that the bail granted to the

petitioner on 18.10.2022 has not been cancelled and that the bail bond has also not been forfeited. The petitioner no doubt did not file an application seeking recalling of the order dated 16.07.2026 but he had filed a fresh application for bail on 24.08.2026, which was before the next date of his appearance/production i.e., 09.09.2026 but the learned trial court vide its order dated 24.08.2026, rejected the bail application.

8. The learned counsel also submits that the allegation against the petitioner is for alleged consumption of the alleged drugs and that he is nowhere involved in smuggling or selling of the seized drugs. He therefore, submits that on the account of the violation of the relevant provisions of the BNSS, the Court may set aside the order dated 16.07.2026 and allow the petitioner to remain on bail in terms of the earlier conditions imposed while granting bail to him pending conclusion of the trial. The learned counsel in support of his submission has relied upon the decision of a Coordinate Bench of this Court in the case of ***Basit Uddin v. State of Arunachal Pradesh*** reported in ***(2025) 1 GLT 54***.

9. Ms. L. Hage, learned Additional Public Prosecutor, on the other hand, submits that after NBWA was issued vide order dated 16.07.2026, the petitioner did not file any application for recalling of the said order. He instead filed a fresh bail application, namely, BA No.167/2026, in which, it was contended by the petitioner that he had filed a Criminal Misc. Case for seeking recall of the NBWA but the learned trial court upon going through the register of the court did not find any such application to have been filed. Accordingly, having found the contention of the petitioner to be false, the learned trial court rejected the bail application. The learned

Additional Public Prosecutor however, submits that considering the facts and circumstances of the case, Court may consider and pass an appropriate order as it deems fit and proper.

10. I have heard the submissions made by the learned counsel for the rival parties and I have also perused the materials available on record.

11. The facts not in dispute is that the petitioner was on bail after bail was granted to him by the trial court on 18.10.2022. Subsequently, after NBWA was issued for his arrest vide order dated 16.07.2026, the petitioner was arrested on 13.08.2026 at 15:30 hours and since then, he remained in judicial custody. It is also not in dispute that the court date just before 16.07.2026 was 10.03.2026 and on which date, the petitioner along with his counsel had appeared before the court. However, when the matter was taken up on 16.07.2026, the petitioner was found to be absent, leading to the issuance of NBWA to arrest him.

12. 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-
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> (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."

13. 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.

14. The Apex Court in the case of ***Inder Mohan Goswami and Another v. 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 to the extremely serious consequence and ramification which ensues on issuance of such warrants.

15. 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.

16. Coming back to the present case, it may be seen that the learned trial court did not undertake such consideration before issuance of NBWA. Even if the NBWA was issued for certain reasons, such as the petitioner being unlikely to obey the summons even if the summon notice was issued to him or that he would abscond and not participate in the trial proceedings but the fact remains that such an observation or of the like nature has not been recorded in the order dated 16.07.2026. All that it says is that the petitioner is absent without steps and hence, NBWA be

issued. The procedure adopted by the learned trial court in the considered view of this Court, and in view of the specific provisions of the BNSS in the Section 90 and also the decision of the Apex Court as referred herein above, is therefore, not sustainable.

17. Accordingly, the order dated 16.07.2026 and the resultant NBWA issued against the petitioner on 18.07.2026 are hereby set aside. In consequence thereof, the petitioner is directed to be released and allowed to remain on bail in terms of the conditions that was stipulated in the order dated 18.10.2026 in bail application No.237/2022.

18. With the above observations and directions, the criminal petition as well as the bail application are disposed of.

JUDGE

Comparing Assistant

CHECKED & VERIFIED
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