GAHC010005472026

2026:GAU-AS:15205

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

Case No. : Crl.Pet./37/2026

ABDUL KUDDUS AND 2 ORS
S/O. LT. HAJI MAJID ALI.

2: ABDUL SUKKUR
BOTH ARE SONS OF LATE HAJI MAJID ALI
R/O VILL. MARJANG PATHAR
P.O. CHOUDHURY BAZAR
P.S. MURAJHAR
DIST. HOJAI
ASSAM
PIN 782439

3: ISHAK ALI
S/O LATE ABDUL HOQUE
R/O VILL. DAKSHIN SAMARALI
P.O. CHOUDHURY BAZAR
P.S. MURJHAR
DIST. HOJAI
ASSAM
PIN 78243

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM.

Advocate for the Petitioner : MR. M S ALAM, MR. T J MAHANTA,MR T GOGOI,MR. A BORUA,MR. M S ALAM

Advocate for the Respondent : PP, ASSAM, A MISHRA(INFORMANT),MD A RAHMAN(INFORMANT),SAMIM RAHMAN(INFORMANT),MR. SURAJIT DAS(INFORMANT),MR A W AMAN(INFORMANT),MR SARFRAZ NAWAZ(INFORMANT)

BEFORE
HONOURABLE MRS. JUSTICE SHAMIMA JAHAN

ORDER

08.10.2026

1. Heard Mr. M.S. Alam, learned counsel appearing for the petitioners. Also heard Mr. R.J. Baruah, learned APP appearing for the State of Assam and Mr. S. Nawaz, learned counsel appearing for the informant.

2. By this application filed under Section 528 read with Section 442 of the BNSS, 2023 the petitioners have prayed for setting aside the order dated 20.12.2025 passed by the learned Additional District and Sessions Judge (FTC), Hojai at Sankardev Nagar in Sessions Case No. 10/2019 whereby a non-bailable warrant of arrest was issued against the present petitioners.

3. The case of the petitioners is that an FIR was lodged against the petitioners and other accused persons which culminated in the filing of a charge sheet. However, the petitioners were not arraigned as accused persons in the said charge sheet. Thereafter, the case proceeded to trial before the learned trial Court against the accused persons named in the charge sheet. During the course of the trial, the present petitioners were summoned and arraigned as accused persons by invoking Section 319 of the CrPC. The further case of the petitioners is that they challenged their being arraigned as accused persons under Section 319 of the CrPC before this High Court and obtained a stay of the said order by an order dated 27.08.2019.

4. The learned counsel for the petitioners therefore submits that despite the

aforesaid stay order, the learned trial Court issued a non-bailable warrant of arrest against the petitioners which according to the learned counsel is palpably illegal.

5. On the other hand, Mr. S. Nawaz, learned counsel appearing for the informant also concedes that the issuance of the non-bailable warrant of arrest in violation of the stay order passed by this Court is not legally sustainable.

6. I have heard the learned counsel for the parties and have perused the records.

7. It is seen that by order dated 20.12.2025, the learned trial Court recorded that a charge sheet had been filed against 22 accused persons and cognizance had also been taken of the offences against them. It was further recorded that seven new accused persons had been arraigned by invoking the powers under Section 319 of the CrPC.

8. It is also recorded by the learned trial Court that the petitioners had appeared before the Court on 28.08.2019 and stated that they had preferred a criminal revision petition against the order passed under Section 319 of the CrPC and had also produced the interim order of stay passed by this Court. However, the learned trial Court observed that since the case had been pending for the last four years and no subsequent order of this Court had been produced nor was there any order showing that the order under challenge had been quashed, it proceeded to issue non-bailable warrants of arrest against the petitioners.

9. However, the aforesaid finding of the learned trial Court is not sustainable in law. It is noticed that the criminal revision petition preferred by the petitioners is still pending before this Court and the interim order of stay passed

therein continues to subsist.

10. In view of the above, the issuance of non-bailable warrants of arrest against the petitioners is not in accordance with law. Accordingly, the order dated 20.12.2025, insofar as it relates to the issuance of non-bailable warrants of arrest against the petitioners is hereby set aside.

11. With the aforesaid observation and direction, the petition stands disposed of.

JUDGE

Comparing Assistant