GAHC010223062026

2026:GAU-AS:15093

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

Case No. : Crl.Pet./1410/2026

NARAYAN DAS
, S/O LATE LOKESH CHANDRA DAS, VILLAGE P.O. BORBOND PART-I, P.S.
DIST HAILAKANDI, ASSAM.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR.

Advocate for the Petitioner : MR. A M BARBHUIYA, MS S R MAZARBHUIYA,S. M. ZINNA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

07.10.2026

Heard Mr. A.M. Barbhuiya, learned counsel for the petitioner and also heard Mr. P. Borthakur, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. In this petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita

(BNSS), 2023, the petitioner has challenged the order dated 29.05.2026, passed by the learned Sub-Divisional Judicial Magistrate (S), Cachar, Silchar, in P.R. Case No.3170/2024, whereby non-bailable warrant of arrest was issued against the present petitioner.

3. Mr. Barbhuiya, learned counsel for the petitioner, submits that the petitioner is an accused in P.R. Case No.3170/2024, under Section 420/406/448/342/376/328/313/379/506 IPC and that the petitioner was appearing before the learned Trial Court regularly, but on 29.05.2026 the petitioner could not remain present in the Court for which the learned Trial Court has directly issued non-bailable warrant of arrest against him without taking recourse to other means of procuring the attendance of the petitioner as prescribed under the provision of BNSS, 2023 and therefore, Mr. Barbhuiya has contended to set aside the impugned order and to allow the petitioner to remain on previous bail, as the same is illegal.

4. Per contra, Mr. Borthakur, learned Additional P.P. has opposed the petition. He submits that the learned Trial Court has rightly issued the non-bailable warrant of arrest against the petitioner without taking any step. Therefore, Mr. Borthakur has contended to dismiss the petition.

5. Having heard the submission of learned counsel for both the parties, this Court has carefully gone through the petition and the documents placed on record and also perused the impugned order dated 29.05.2026, by which non-bailable warrant of arrest was issued against the present petitioner.

6. It appears from the Annexure-6, the order sheet of P.R. Case No.3170/2024, that the learned Trial Court has directly issued non-bailable warrant of arrest against the petitioner for his default on 29.05.2026, and further it appears that till 13.03.2026, the petitioner was either regularly appearing before the Court or his counsel represent him by filing appropriate petition. And it further appears from perusal of the impugned order, dated 29.05.2026, that the learned Trial Court has directly issued non-bailable

warrant of arrest against the petitioner without issuing first notice to the bailor and bailable warrant of arrest against him, to secure his attendance.

7. It is well settled in the case of **Inder Mohan Goswami & Another v. State of Uttaranchal & Others**, reported in **(2007) 12 SCC 1**, that issuance of non-bailable warrant of arrest against the accused interferes with personal liberty and should not be done casually or without proper application of mind. As a general rule, the Court should prefer summon or bailable warrant of arrest if this would suffice to secure the accused appearance and as such, the procedure prescribed for issuing non-bailable warrant of arrest has to be followed scrupulously.

8. But, the said procedure appears to be not followed here in this case by the learned Trial Court while issuing non-bailable warrant of arrest against him and as such, the impugned order dated 29.05.2026, fails to withstand the legal scrutiny and accordingly, the same stands set aside and quashed.

9. The petitioner is directed to appear before the learned Trial Court on or before 09.10.2026 and to file an application for allowing him to remain on previous bail and on such petition being filed, the learned Trial Court shall consider the same in accordance with law. In view of setting aside of the impugned order, dated 29.05.2026, and by all subsequent orders, the non-bailable warrant of arrest issued against the petitioner shall be recalled.

10. In terms of above, the criminal petition stands disposed of.

Sd/- *Robin Phukan*
JUDGE

Comparing Assistant