GAHC010224032026

2026:GAU-AS:15159

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

Case No. : Crl.Pet./1428/2026

HIROK DEBNATH @ ROHIT
S/O.- LATE HIRADHAN DEBNATH,
R/O.- HOSPITAL ROAD,P.S.- SILCHAR,DISTRICT- CACHAR, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM.

2:NUR AISHA BARLASKAR

W/O.- NURUL HUSSAIN BARLASKAR
R/O.- BAHADURPUR
P.S.- UDHARBOND
DISTRICT- CACHAR
ASSAM

Advocate for the Petitioner : MRS. R RONGMEI, MR. N KOCH

Advocate for the Respondent : PP, ASSAM,

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

08.10.2026

Heard Ms. R. Rongmei, 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 Sanhia (BNSS), 2023, the petitioner has challenged the order dated 25.09.2026, passed by the learned Additional District & Sessions Judge cum Special Judge (POCSO), Cachar, Silchar, in Special (POCSO) Case No.62/2026, by which non-bailable warrant of arrest has been issued against the petitioner.

3. Ms. Rongmei, learned counsel for the petitioner submits that the petitioner is an accused in Special (POCSO) Case No.62/2026, under Section 4/12/14/17/18 of the POCSO Act, read with Section 3/4/5/6/7 of Immoral Traffic Act, read with Section 14(1)(a) of the Child and Adolescent Labour (Prohibition and Regulation) Act, arising out of Udharbond P.S. Case No.61/2026.

4. Ms. Rongmei submits that the petitioner was granted bail and he was regularly appearing before the learned Court. But, subsequently on 25.09.2026, he could not remain present before the Court, for which non-bailable warrant of arrest was issued against him. She further submits that the petitioner is ready to face trial and will appear before the learned Trial Court on each and every date and therefore, it is contended to interfere with the impugned order dated 25.09.2026, and to allow the accused to remain on previous bail.

5. Per contra, Mr. Borthakur, learned Additional P.P. submits that the petitioner may be directed to appear before the learned Trial Court and to apply for regular bail or to allow him to remain on previous bail.

6. 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 25.09.2026.

7. It appears that on 25.09.2026, the petitioner could not remain present before

the Court. The reason for such default, according to the learned counsel for the petitioner is miscommunication with his engaged counsel, he could not appear before the learned Trial Court on that day.

8. It also appears that though the petitioner remained absent on that day, the learned Trial Court, without issuing any notice to the bailor, or issuing bailable warrant of arrest against him at first, directly issued non-bailable warrant of arrest, the practice of which is deprecated by Hon'ble Supreme Court in the case of **Inder Mohan Goswami & Another v. State of Uttaranchal & Others**, reported in **(2007) 12 SCC 1**. In the said case, Hon'ble Supreme Court has held that issuance of non-bailable warrant of arrest interferes with the personal liberty, which is a paramount right guaranteed under Article 21 of the Constitution of India and should not be done casually or without proper application of mind. It is also held that as a general rule, Court should prefer summon or bailable warrant of arrest, if this would suffice to secure the accused appearance. Non-bailable warrant of arrest should ordinarily be issued only when summon or bailable warrant of arrest are unlikely to produce the desired result i.e. reasonable belief that the person will not appear voluntarily, inability to service of summon or risk of harm or in cases involved in heinous offences where the accused is likely to evade, process or tamper with evidence.

9. In the instant case, before issuing the non-bailable warrant of arrest against the present petitioner, the learned Trial Court has not issued the bailable warrant of arrest or notice to the bailor nor it had recorded any reasonable belief that the notice to the bailor or summon to the accused or bailable warrant of arrest would unlikely to produce the desired result.

10. In that view of the matter, the impugned order dated 25.09.2026 fails to withstand the legal scrutiny and accordingly, the same stands set aside and quashed.

11. The petitioner is directed to appear before the learned Trial Court on or before 04.11.2026 and to apply for allowing him to remain on previous bail or to grant fresh

bail and in the event of filing such an application, the learned Trial Court shall consider the same in accordance with law.

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

Sd/- *Robin Phukan*
JUDGE

Comparing Assistant