GAHC010225162026

2026:GAU-AS:15157

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

Case No. : Crl.Pet./1425/2026

DR. HIREN KALITA
SON OF- LATE DADHI RAM KALITA, RESIDENT OF- SARPARA, P. O.- MIRZA, P .S - PALASHBARI, DISTRICT- KAMRUP, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS. R KALITA, MS N BORDOLOI,MS. C BARMAN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

08.10.2026

Heard Ms. R. Kalita, 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 28.09.2026, passed by the learned District & Sessions Judge, Kamrup, Amingaon, in Sessions Case No.282/2014, under Section 120(B)/302 IPC. It is to be noted here that vide impugned order dated 28.09.2026, the learned District & Sessions Judge, Kamrup, Amingaon, has issued non-bailable warrant of arrest against the present petitioner, who is an accused in Sessions Case No.282/2014, under Section 120(B)/302 IPC.

3. Ms. Kalita, learned counsel for the petitioner, submits that the petitioner is an accused in Sessions Case No.282/2014, pending before the Court of learned Sessions Judge, Kamrup, Amingaon. She also submits that on 28.09.2026, the petitioner could not remain present in the Court, for which his engaged counsel has filed a petition, being No.1997A/2026 showing the ground of his absence. But, the learned Trial Court has rejected the petition on the ground that the petitioner has not been cooperating with the trial. Ms. Kalita submits that without first issuing notice to the bailor or bailable warrant of arrest against the present petitioner, the learned Sessions Judge has directly issued non-bailable warrant of arrest against the petitioner and the said order is illegal and arbitrary and therefore, she has contended to interfere with the same.

4. Per contra, Mr. Borthakur, learned Additional P.P. submits that the petitioner may be directed to appear before the learned Trial Court and to file an application either to allow him to remain on previous bail or to go on fresh bail.

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 28.09.2026.

6. It appears that on 28.09.2026, the petitioner could not remain present before the Court. The reason for non-appearance, according to the learned counsel for the petitioner is that the petitioner was suffering from illness.

7. It also appears that though the petitioner remained absent on that day and his counsel has filed an application showing the cause of absence. But, the learned Trial Court has rejected the same and without issuing any notice to the bailor or issuing bailable warrant of arrest against him 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.

8. In the instant case, the learned Trial Court has issued non-bailable warrant of arrest directly against the present petitioner, without first issuing the bailable warrant of arrest or notice to the bailor nor it has recorded any reasonable belief that the notice to the bailor or summon to the accused or bailable warrant of arrest is unlikely to produce the desired result.

9. In that view of the matter, the impugned order dated 28.09.2026 fails to withstand the legal scrutiny and accordingly, the same stands set aside and quashed.

10. The petitioner is directed to appear before the learned Trial Court on or before 04.11.2026, and to apply for allowing him either 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.

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

Sd/- *Robin Phukan*
JUDGE

Comparing Assistant