GAHC010226552026

2026:GAU-AS:15454

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

**Case No. : Crl.Pet./1446/2026**

MD HAIDAR ALI
SON OF LATE JAHER ALI, VILLAGE BONGHUGI, P.O.- BONGHUGI, P.S. KALGACHIA, DISTRICT- BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE P.P. ASSAM.

2:SAIDUL ISLAM

SON OF LATE OSMAN GANI
VILLAGE BONGHGUI
P.O.BONGHUGI
P.S. KALGACHIA
DISTRICT- BARPETA
ASSAM

**Advocate for the Petitioner** : MR. N UDDIN, MS. S ALTAF,MR. J U AHMED,MR. N I KHAN,MR S K CHHETRY

**Advocate for the Respondent** : PP, ASSAM,

**BEFORE**
**HONOURABLE MR. JUSTICE ROBIN PHUKAN**

**ORDER**

**13.10.2026**

Heard Mr. N. Uddin, learned counsel for the petitioner and Mr. P. Barthakur, learned counsel for the State respondent.

**2.** In this petition, under Section 528 of the BNSS, 2023, the petitioner, namely, **Md. Haidar Ali**, has challenged the Order, dated 11.09.2026, passed in continuation of the earlier order, dated 04.05.2026, whereby, Non-Bailable Warrant of Arrest ('NBWA' for short) was issued against the present petitioner, fixing the matter on 10.12.2026, for appearance.

**3.** Mr. Uddin, learned counsel for the petitioner submits that the petitioner is an accused in PRC Case No. 1520/2025, under Sections 447/341/323/294/34 IPC, for which, the learned Sub-Divisional Judicial Magistrate ('SDJM' for short) (M), Barpeta, has issued NBWA against the petitioner, without first issuing notice to the bailor or without issuing Bailable Warrant of Arrest ('BWA' for short) against the petitioner, and without recording any satisfaction that the said step would not result in the desired outcome. He also submits that the petitioner is ready to face trial and will appear before the learned Court below regularly and therefore, he has contended to allow this petition, by setting aside the impugned order, dated 11.09.2026.

**4.** Mr. Barthakur, learned Additional Public Prosecutor submits that the petitioner may be directed to appear before the learned SDJM (M), Barpeta, and

either apply for regular bail or pray for allowing him to remain on previous bail.

**5.** Taking note of the submissions of the learned counsel for both the parties, this Court has carefully gone through the petition and the documents placed on record and also gone through the impugned order, dated 11.09.2026.

**6.** It appears that the learned Court below has first issued NBWA vide order, dated 04.05.2026, and the said order was issued without first issuing notice to the bailor, or without issuing BWA against the petitioner, and also without recording any satisfaction that the aforesaid step has failed to secure the attendance of the accused.

**7.** The law with regard to issuing NBWA against the accused 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.** Thus, having examined the impugned order, dated 11.06.2026, this Court is of the view that the same 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 SDJM(M), Barpeta, on or before 03.11.2026, and apply for regular bail. And in the event of filing

such an application, the learned SDJM(M), Barpeta, shall consider the same in accordance with law.

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

**JUDGE**

**Comparing Assistant**