GAHC010247142026

2026:GAU-AS:16593

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

Case No. : Crl.Pet./1559/2026

AMRIT SAGAR SAIKIA
S/O PRAHLAD SAIKIA R/O-VILLAGE-NO.1 BORAJAN P.O- MACHKHOWA,
P.S- DHEMAJI DISTRICT-DHEMAJI, ASSAM PH NO-6002408554 (M)

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. I CHOUDHURY, MS. P CHOUDHURY,HIMSHIKHA TALUKDAR,R L CHUTIA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

12.11.2026

Heard Mr. I. Chodhury, learned counsel for the petitioner and Ms. S.H. Borah, learned Additional Public Prosecutor for the State respondent.

2. In this petition, under Section 528 of the BNSS, the petitioner has challenged the order, dated 05.04.2025, passed in GR Case No. 1243/2015, whereby Non-Bailable Warrant of Arrest (NBWA hereinafter) was issued against

the present petitioner.

3. Mr. Choudhury, learned counsel for the petitioner, submits that the petitioner is an accused in GR Case No. 1243/2015, which is pending before the learned Judicial Magistrate First Class, Lakhimpur, North Lakhimpur (trial court hereinafter), at the stage of appearance. He also submits that without issuing any Bailable Warrant of Arrest (BWA hereinafter), the learned trial court, vide impugned order dated 05.04.2025, had directly issued NBWA against him, which is illegal and improper. Mr. Choudhury further submits that the petitioner is ready to appear before the learned trial court and will face the trial and therefore, he has contended to allow this petition.

4. Per-contra, Ms. Borah, learned Additional Public Prosecutor, submits that the petitioner may be directed to appear before the learned trial court and to apply for regular bail.

5. Having heard the submissions of learned counsel for both the parties, this Court has carefully gone through the petition as well as the documents placed on record and also perused the impugned order, dated 05.04.2025.

6. It appears that the learned trial court had issued NBWA without first issuing summon and BWA against the present petitioner.

7. The law with regard to issuance of NBWA is well-settled in the case of **Inder Mohan Goswami and Another vs. State of Uttarakhand and Others**, reported in **(2007) 12 SCC 1**, wherein a three-Judge Bench of Hon'ble Supreme Court has held as under:

> **1. Issuance of non-bailable warrants interferes with personal liberty as guaranteed by Article 21 of the Constitution of India and should not be done casually or without proper application of mind.**

2. **As a general rule, courts should prefer summons or bailable warrants if these would suffice to secure the accused's appearance.**

3. **Non-bailable warrants should ordinarily be issued only when summons and bailable warrants are unlikely to produce the desired result, and there must be reasonable belief that the person will not appear voluntarily (inability to serve summons, or risk of harm, or in cases involving heinous offenses where the accused is likely to evade the process or tamper with evidence).**

8. In the instant case, as stated above, without complying with the aforementioned requirement, the learned trial court had directly issued NBWA against the petitioner. And in that view of the matter, the impugned order, dated 05.04.2025, fails to withstand the legal scrutiny. And accordingly, the same warrants interference of this Court.

9. Under the given facts and circumstances, it is provided that the petitioner shall appear before the learned trial court on or before 22.12.2026, and to apply for regular bail and in the event of filing such an application, the learned trial court shall consider the same in accordance with law.

10. Till then, the NBWA issued against the petitioner shall be kept in abeyance.

11. In terms of above, this petition stands disposed of at this motion stage itself.

JUDGE

Comparing Assistant