GAHC010251282026

undefined

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

Case No. : Crl.Pet./1560/2026

MD HUSSAIN ALI
REPRESENTED BY HIS FATHER ABDUL HASSAN ALIAS HASEN ALI R/O- VILLAGE- PANDITGHAT SHILDHUBI, P.S- KACHUA, DISTRICT- NAGAON, ASSAM. PIN-782450

VERSUS

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

2:RAMISHA KHATUN (WIFE OF INFORMANT)
W/O- LATE MD. FURKAN ALI R/O- BARBIL DHANSILA
P.S.- KACHUA DIST-NAGAON
ASSAM. PIN- PIN-78245

Advocate for the Petitioner : MR. A S CHOUDHURY, MS. S YEASMIN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

12.11.2026

Heard Mr. A.S. 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 10.11.2025 and all subsequent orders thereof, passed by the

learned Additional Sessions Judge cum Special Judge (POCSO), Nagaon (trial court hereinafter), in Special POCSO Case No. 119(N)/2025, under Sections 64/329(4) of the BNS, read with Sections 4/14 of the POCSO Act, whereby Non-Bailable Warrant of Arrest (NBWA hereinafter) as well as Proclamation & Attachment (P&A hereinafter) were issued against him and fixed the matter on 16.11.2026, for appearance of EO.

3. Mr. Choudhury, learned counsel for the petitioner, submits that the petitioner is an accused in Special POCSO Case No. 119(N)/2025 and he could not appear before the trial court on 10.11.2025 and all subsequent dates, for which NBWA as well as P&A were issued against him. He further submits that the impugned orders are illegal and liable to be interfered with, as the same were issued without first issuing summon or Bailable Warrant of Arrest (BWA hereinafter) against the petitioner.

3.1. Mr. Choudhury also 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 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 10.11.2025, and all subsequent orders passed thereafter.

6. It appears that the learned trial court had issued NBWA as well as P&A without issuing first 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. Further, it is also well settled that P&A can be issued only after satisfying the requirements of Section 84 of the BNSS and that the Court must have reason to believe that the person has absconded or is concealing himself, so that warrant cannot be executed and the reason to believe requires application of judicial mind, based on materials on record, i.e. police report of non-execution, attempt and service. Mere return of an un-executed warrant is not enough. The Court must record satisfaction that the person is deliberately avoiding the process.

9. In the instant case, having examined the impugned orders, in the light of the aforementioned proposition, this Court is of the view that the same fails to withstand the legal scrutiny and accordingly, the same warrants interference of this Court.

10. Under the given facts and circumstances, it is provided that the petitioner shall appear before the learned trial court on or before 30.11.2026, 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.

11. Till then, the NBWA as well as the P&A issued against the petitioner shall be kept in abeyance.

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

JUDGE

Comparing Assistant