

24.06.2026

Serial no. 10

[Srimanta]

Ct. No. - 29

CRR 3793 of 2025

In re : An Application under Sections 482 of the Code of Criminal Procedure, 1973 corresponding to Section 528 of the Bharatiya Nagarik Sureaksha Sanhita, 2023

-And-

In the matter of : DIPU KUMAR SHAW @ DIPU SHAW

... ... Petitioner

Mr. Arka Ranjan Bhattacharya, Advocate

... ... *For the Petitioner.*

Mr. Kallol Mondal,

Mr. Ramashis Mukherjee,

Ms. Shalini Bairagi, Advocates

.....*For the State.*

1. Affidavit-of-service filed by the petitioner is taken on record.
2. In this application, the petitioner has challenged the order dated 30.07.2025 by which the Court below had issued warrant of proclamation and warrant of attachment simultaneously and he has also challenged the order dated 18.12.2024 by which warrant of arrest was issued against the present petitioner, Dipu Kumar Shaw @ Dipu Shaw.
3. Being aggrieved by the aforesaid order, learned Counsel for the petitioner submits that Court below erred in issuing successive warrant orders and subsequent simultaneous proclamation and attachment order against the petitioner, without waiting for execution report from the Police and

thereby has caused grave prejudice to the petitioner. The petitioner had duly participated in the trial and remained present during the examination of the *de facto* complainant and the victim, which shows his *bona fide* intention to cooperate with the trial.

4. He further submits absence of the petitioner on 18.12.2024 was neither deliberate nor intentional but due to miscommunication with his learned Advocate which could not have been treated as an act of abscondence. He further submits that during the prosecution evidence, no incriminating material has been placed against the petitioner particularly when the victim herself turned hostile and has deposed that she has no grievance against the petitioner. The Court below failed to appreciate that custodial detention of the petitioner is not required for the purpose of such façade trial. Therefore, continuation of coercive steps like proclamation and attachment against the petitioner who is a permanent resident having no chance of abscondance, amounts to abuse of the process of the Court.
5. Learned Counsel for the State submits that the petitioner was absconding for a considerable period of time and as such the orders impugned are justified and does not call for interference by this Court.
6. Having heard learned Counsel for the petitioner and the State, it appears that the Court below by the impugned

order dated 30th July, 2025 had issued warrant of proclamation and warrant of attachment simultaneously against the petitioner though on that date he did not receive any non-execution report. There is also nothing to show that any emergent situation had compelled the Court below to issue both the process simultaneously against the petitioner. It is settled law that only in the circumstances mentioned in the proviso to Sub-Section (1) of Section 85 of BNSS, the Court is authorized to issue the order of proclamation and attachment simultaneously.

7. Before issuance of such process the Court must have satisfied about non-execution of the warrant of arrest and that the accused is absconding. Since in this case the procedure has not been followed in connection with issuance of warrant of proclamation or issuance of warrant of attachment as laid down in Sections 84 and 85 of BNSS, I am of the view that the order impugned is not sustainable in the eye of law. In view of above, the impugned order dated 30th July, 2025 by which the Court below issued warrant of proclamation and warrant of attachment simultaneously is hereby set aside. However, I do not find any impropriety in the order dated 18.12.2024 which can call for interference by this Court.

8. Learned Counsel appearing on behalf of the petitioner, however, made an innocuous prayer that he may be granted leave to surrender before the Court below.
9. In view of above, the instant application being CRR/3793/2025 is hereby disposed of giving liberty to the petitioner to surrender before the Court below within a period of two weeks from the date of communication of the order and in the event of such surrender by the petitioner, the Court below will dispose of his prayer in accordance with law uninfluenced by any observation made herein. The order by which warrant of arrest was issued against the petitioner vide order dated 18.12.2024 is hereby stayed for a period of two weeks or till the petitioner surrender before the Court below, whichever is earlier.

(Dr. Ajoy Kumar Mukherjee, J.)