GAHC040016702026

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

Case No. : Crl.Petn./326/2026

Rantu Mossang
Age: 53
Occupation :
Address:Son of Phangtang Mossang
resident of Village Sanglo Putung (Gohpur Tinali)
PO RK Mission
PS Chimpu
Papum Pare District
Arunachal Pradesh Office at Office of Commandant 1st AAPBN
BHQ Chimpu
Papum Pare District
Arunachal Pradesh.
VERSUS
The State of AP
Age: 0
Occupation :
Address:represented by the PP of AP

Advocate for : Binter Picha
Advocate for : P P of AP appearing for The State of AP: Advocate appearing for respectively.

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

Date : 14.10.2026

Heard Mr. B. Picha, learned counsel for the petitioner and Mr. T. Ete, learned Addl. P.P. for the State.

[2.] By filing this petition under Section 528 of the BNSS, 2023 the petitioner prays for setting aside and quashing of the impugned order dated 11.08.2026 and 22.09.2026 passed by the Court of Special Judge, ND&PS, Yupia in ND&PS Case No.03/2019 in connection with ITA P.S Case No.96/2007 dated 04.05.2007 registered under Section 20(b)/27(A) of the ND&PS Act 1985 and for a direction to release the accused person from custody and to remain on bail as per the earlier bail bond.

[3.] Mr. B. Picha, learned counsel submits that the petitioner was granted bail by the Trial Court on 23.05.2007 on furnishing a bail bond of Rs.10,000/- with one surety of the like amount subject to the condition that (i) the surety must be a reputed local person of Papum Pare District; (ii) the applicant accused shall make himself available for investigation by the police as and when required; (iii) the applicant accused shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to the Investigating Authority; (iv) the applicant accused shall not leave beyond Arunachal Pradesh without the previous permission of the Court.

[4.] While remaining on bail, the petitioner appeared before the Trial Court on several dates but when the matter was fixed on 11.08.2026, the petitioner could not appear on account of mal-functioning of his phone. When the matter was called out before the Court, his counsel informed the Court that the petitioner was not responding to his phone call. As a result, the Trial Court issued a non-bailable warrant of arrest (NBWA) against the petitioner with notice to the bailor while fixing the next date as 22.09.2026. Following the said order, the petitioner was arrested on 21.09.2026 at 10:40 hours and was produced by the Investigating Officer, Itanagar Police Station before the Trial Court on

21.09.2026. The learned Trial Court thereafter remanded him to one day judicial custody and further directed his production on 22.09.2026, since the case was fixed on 22.09.2026 by an earlier order dated 11.08.2026 by which the NBWA was issued. On 22.09.2026, the petitioner presented a bail application namely, Bail Application No.191/2026 but the learned Trial Court rejected the same and since then, the petitioner has been kept in jail.

[5.] Mr. B. Picha, learned counsel submits that since the petitioner had some mal-functioning on his phone but at the same time as the defense counsel representing him had appeared before the Trial Court, he ought to have taken necessary steps seeking dispensation of the appearance of the petitioner on that day. Instead, he clearly submitted that he could not contact the petitioner and therefore, the learned Trial Court issued the NBWA. He further submits that on being arrested and produced before the Trial Court, the petitioner was not given an opportunity to explain the reason as to why he could not appear on that day and that without affording him any such opportunity, he has been retained in jail and that too without cancellation of the bail bond.

[6.] Mr. T. Ete, learned Addl. P.P submits that issuance of the NBWA would be permissible if the accused person fails to appear before the Trial Court on the date fixed in terms of the Section 92 of the BNSS but he submits that once the person is arrested and brought to the Trial Court, before sending him into custody, the Trial Court ought to have afforded an opportunity to the petitioner in view of the law laid down by the Apex Court in a catena of decision. He submits that under the circumstance, the Court may consider and pass appropriate orders as it deems fit and proper.

[7.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. At the outset, it

may be stated herein that this Court had the occasion to deal with a similar issue in Criminal Petition No.271/2026 and it would be gainful to abstract paragraph Nos.14 to 18 of the order passed in that case on 09.10.2026:

"*[14.] Section 90 of the BNSS may be abstracted hereunder for ready perusal: -*

"*90. Issue of warrant in lieu of, or in addition to, summons.-A Court may, in any case in which it is empowered by this Sanhita to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest- (a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or (b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure."*

[15.] From the above abstract, it may be seen that the court is indeed empowered to issue warrant of arrest to secure the presence of accused person but such a step has to be resorted only if the court finds that the issuance of summon or summons for appearance of the accused would not be effective and there was likely for him or her to abscond. Further, the issuance of such warrant of arrest has to be preceded by the satisfaction of the court that it was necessary to do so for reasons which are to be recorded in writing. It is only then that the court would be justified in issuing a warrant of arrest of the accused person for having not appeared before the court.

[16.] The Apex Court in the case of Inder Mohan Goswami and Another vs. State of Uttaranchal and Others reported in (2007) 12 SCC 1, in the given facts of the case held that the issuance of NBWA involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, courts have to be extremely careful before issuing the NBWA. Just as liberty is precious for an individual so is the interest of society in maintaining law and order. Both are extremely important for the survival of a civilised society. Sometimes in the larger interest of the public and the State, it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the NBWA should be issued. Further, NBWA should only be issued to bring a person to

court when the summons or bailable warrants are unlikely to have the desired results. This could be when it is reasonably believed that the person will not voluntarily appear before the court or the police authorities are unable find the person in order to serve him with a summon or it is considered that the person could harm someone if not placed under custody immediately. The court thus held that as far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable nor non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due the extremely serious consequence and ramification which ensues on issuance of such warrants.

[17.] The Apex Court also held that the power to issue non-bailable warrants being discretionary, it must be exercised judiciously and with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straitjacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous nature and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.

[18.] The Madras High Court, in Pilliappan(Supra) under the given facts of that case held that in the event the accused person does not appear on the hearing date and no petition is filed for dispensing with his presence, a NBWA can be issued. On production of the accused by the police, an opportunity is required to be afforded to him to explain why he failed to appear before the Court. If the accused furnishes a satisfactory explanation, the Court may recall the warrant and release him. On the other hand, if the explanation is found to be unsatisfactory, the Court is required to record its reasons and arrive at a finding that the bail bond has been forfeited and upon such a finding, the bail bond gets automatically cancelled. The Magistrate cannot release the accused on his own bond in view of the statutory bar under Section 446A (Section 492 of the BNSS). However, the accused may be released in accordance with the proviso to Section 446-A(b)(Section 492(b) of the BNSS)."

[8.] In the present case it may be seen that after the issuance of the NBWA,

the petitioner was arrested and produced before the Trial Court on 21.09.2026 and thereafter he was sent to one day judicial custody to be produced again on 22.09.2026. On 22.09.2026, the learned Trial Court has not given the reason as to why it found the necessity to issue NBWA and at the same time did not give the petitioner an opportunity as to why his bail should be cancelled and his bail bond forfeited.

[9.] Considering the above, this Court is of the view that the impugned order dated 11.08.2026 as well as the order dated 21.09.2026 and 22.09.2026 are not sustainable in law and accordingly, they are set aside.

[10.] The petitioner is therefore directed to be released on bail if not wanted in connected with any other case. On his release, the petitioner shall continue to remain on bail as per the terms and conditions already stipulated by the Trial Court vide its order dated 23.05.2007.

[11.] From the TCR it is seen that the next fixed date by the Court is 07.12.2026. The petitioner shall therefore make himself available on that date without fail.

[12.] With the above observation and direction the Criminal Petition stands disposed of.

JUDGE

Comparing Assistant