

GAHC010001162026



2026:GAU-AS:516

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

Case No. : Crl.Pet./24/2026

SRI ANANTA DUTTA AND ANR
S/O LATE RUPEN DUTTA
RESIDENTS OF KACHARIHAT, GOLAGHAT.

2: SRI DIGANTA DUTTA
S/O LATE RUPEN DUTTA
RESIDENTS OF KACHARIHAT
GOLAGHAT

VERSUS

STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. P BORA, MS K SARMA, MS K BHATTACHARYYA, MR H K SARMA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT

09.01.2026

Heard Mr. P. Bora, learned Senior Counsel assisted by Ms. K. Bhattacharyya, learned counsel for the petitioners and Mr. B. Sharma, learned Additional Public Prosecutor for the respondent, State of Assam.

2. This criminal petition under Section 528, Bharatiya Nagarik Suraksha Sanhita [BNSS], 2023 is preferred to assail an Order dated 05.08.2025 and other subsequent Orders whereby warrants of arrest [Non-Bailable Warrant of Arrest] have been issued against the petitioners, and also an Order dated 17.02.2025 whereby an Order for Proclamation and Attachment [P&A] has been issued by the Court of learned Sub-Divisional Judicial Magistrate, Titabor, Jorhat [‘the Trial Court’] in the course of proceedings of P.R.C. no. 156/2025.

3. On the basis of a First Information Report [FIR] lodged before the Officer In-Charge, Titabor Police Station on 07.05.2025, a case, Titabor Police Station Case no. 65/2025 [G.R. Case no. 139/2025] was registered for the offences under Sections 126[2]/281/125[4]/117[2]/109/351[2]/3[5], Bharatiya Nyaya Sanhita [BNS], 2023. In the FIR lodged, ten persons were named as accused and the two petitioners herein were figured as accused no. 4 and the accused no. 5 respectively.

4. The case, Titabor Police Station Case no. 65/2025 was investigated into and upon completion of investigation, the I.O. submitted a charge-sheet under Section 193, BNSS vide Charge-Sheet no. 67/2025 on 23.06.2025 finding a prima facie case established against six nos. of accused persons including the two petitioners [A-4 and A-5] for commission of offences under Sections 126[2]/351[2]/281/125[a]/117[2]/109/3[5], BNS. In the Charge-Sheet, the I.O. made a mention to the effect that when efforts were made to arrest the two petitioners during investigation, they were found absconding evading arrest since the registration of the case. The I.O. further mentioned that during investigation, sufficient evidence were found against the two petitioners for committing the offences. The I.O. in the charge-sheet made a prayer to the Court to declare the two petitioners as absconders.

5. On submission of the charge-sheet, the case has been registered as P.R.C. no. 156/2025. The Trial Court on 05.08.2025 took cognizance of the offences under Sections 126[2]/351[2]/125[a]/117[2]/109/3[5], BNS against the accused persons : [1] Ritu Prasad Dutta, [2] Jitu Dutta @ Nali, and [3] Bubul Dutta. In so far as the two petitioners, who have also been charge-sheeted, are concerned, the Trial Court took note of the fact that the

I.O. mentioned them as absconders in the Charge-Sheet.

6. By Order dated 05.08.2025, the Trial Court while issuing summons to the other four accused persons to secure their appearance, ordered for issuance of warrants of arrest [NBWAs] against the two petitioners treating them as absconding. On 30.08.2025, the Trial Court observed that the warrants of arrest [NBWA] issued against the two petitioners had returned unexecuted with a report seeking another date for execution of the warrant of arrest [NBWA]. Accordingly, the Trial Court ordered for re-issuance of the warrants of arrest [NBWA]. When the warrants of arrest [NBSWAs] issued against the petitioners returned unexecuted seeking another date for execution, the Trial Court on 27.10.2025 ordered for re-issuance of the warrant of arrest [NBWA]. An order of similar nature was passed on 28.11.2025.

7. On 17.12.2025, when the warrant of arrest [NBWA] issued against the two petitioners were found returned unexecuted with a report stating that the warrant could not be executed as the warrantees were not found at their residences, the Trial Court ordered for issuance of proclamation and attachment against the two petitioners fixing the next date on 19.01.2026 for appearance of the petitioners.

8. The provisions for publication of written proclamation in respect of a person absconding and issue of warrant in lieu of, or in addition to, summons are contained in Section 84 and Section 90 respectively of the BNSS. For ready reference, Section 84 and Section 90 of the BNSS are quoted hereinbelow :-

84. Proclamation for person absconding.

[1] If any Court has reason to believe [whether after taking evidence or not] that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

[2] The proclamation shall be published as follows:-

[i] [a] it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

[b] it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

[c] a copy thereof shall be affixed to some conspicuous part of the Court-house;

[ii] the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

[3] A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause [i] of sub-section [2], shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

[4] Where a proclamation published under sub-section [1] is in respect of a person accused of an offence which is made punishable with imprisonment of ten years or more, or imprisonment for life or with death under the Bharatiya Nyaya Sanhita, 2023 or under any other law for the time being in force, and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

[5] The provisions of sub-sections [2] and [3] shall apply to a declaration made by the Court under sub-section [4] as they apply to the proclamation published under sub-section [1].

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.

9. The provisions of Section 84 and Section 90 of the Bharatiya Nagarik Suraksha Sanhita, 2023 [BNSS] are, in essence, similar to the provisions of Section 82 and Section 87 of the Code of Criminal Procedure, 1973 ['CrPC' or 'the Code', for short].

10. In so far as the issuance of non-bailable warrant of arrest [NBWA] is concerned, the Court is to be guided by the parameters set forth in Section 87, CrPC or Section 90, BNSS. As per Clause [a] of Section 87, CrPC or Clause [Q] of Section 90, BNSS, if the Court has reason to believe that the person has absconded or will not obey the summons, the Court is justified to issue a warrant of arrest. Under Section 87[b], CrPC/Section 90[b], BNSS, if summons is proved to have been duly served on the person and the person has failed to appear without reasonable excuse, the Court would be justified to issue a warrant of arrest to secure such person's appearance before it. Every warrant issued by a Court remains in force until it is cancelled by the Court which issued it, or until it is executed.

11. The situation provided in Section 87[b], CrPC/Section 90[b], BNSS has not arisen in the case in hand.

12. Finding that in many cases, warrant of arrests [BWA or NBWA] are issued casually and mechanically, a three-Judge Bench of the Hon'ble Supreme Court in **Inder Mohan Goswami and another vs. State of Uttaranchal and others, [2007] 12 SCC 1**, has observed in the following manner :-

Personal liberty and the interest of the State

50. Civilised countries have recognised that liberty is the most precious of all the human rights. The American Declaration of Independence, 1776, French Declaration of the Rights of Men and the Citizen, 1789, Universal Declaration of Human Rights and the International

Covenant of Civil and Political Rights, 1966 all speak with one voice—liberty is the natural and inalienable right of every human being. Similarly, Article 21 of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with procedure prescribed by law.

51. The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants.

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When non-bailable warrants should be issued

53. Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when :

- it is reasonable to believe that the person will not voluntarily appear in court; or
- the police authorities are unable to find the person to serve him with a summon; or
- it is considered that the person could harm someone if not placed into custody immediately

54. 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 or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the criminal complaint or FIR has not been filed with an oblique motive.

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56. The power being discretionary must be exercised judiciously 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 crime 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.

57. The court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non-bailable warrant.

13. Following **Inder Mohan Goswami** [supra], the Hon'ble Supreme Court in **Raghuvansh Dewanchand Bhasin vs. State of Maharashtra and another, [2012] 9 SCC 791**, has proceeded to observe as under :-

10. It needs little emphasis that since the execution of a non-bailable warrant directly involves curtailment of liberty of a person, warrant of arrest cannot be issued mechanically but only after recording satisfaction that in the facts and circumstances of the case it is warranted. The courts have to be extra-cautious and careful while directing issue of non-bailable warrant else a wrongful detention would amount to denial of constitutional mandate envisaged in Article 21 of the Constitution of India. At the same time, there is no gainsaying that the welfare of an individual must yield to that of the community. Therefore, in order to maintain the rule of law and to keep the society in functional harmony, it is necessary to strike a balance between an individual's rights, liberties and privileges on the one hand, and the State on the other. Indeed, it is a complex exercise. As *Cardozo, J.* puts it 'on the one side is the social need that crime shall be repressed. On the other, the social need that law shall not be flouted by the insolence of office. There are dangers in any choice.' [Ed. : As observed by *Cardozo, J.* in *People v. Defore*, 242 NY 13, at 24 : 150 NE 585, at 589 (1926)].

11. Be that as it may, it is for the court, which is clothed with the discretion to determine whether the presence of an accused can be secured by a bailable or non-bailable warrant to strike the balance between the need of law enforcement on the one hand and the

protection of the citizen from highhandedness at the hands of the law-enforcement agencies on the other. The power and jurisdiction of the court to issue appropriate warrant against an accused on his failure to attend the court on the date of hearing of the matter cannot be disputed. Nevertheless, such power has to be exercised judiciously and not arbitrarily, having regard, inter alia, to the nature and seriousness of the offence involved; the past conduct of the accused; his age and the possibility of his absconding. (Also see State of U.P. vs. Poosu [(1976) 3 SCC 1 : 1976 SCC (Cri) 368].)

14. Reverting back to the facts of the case in hand, it is found that the Trial Court on 05.08.2025 proceeded to order for issuance of warrants of arrest [NBWAs] merely on the basis of the observation made by the I.O. in the Charge-Sheet that the two petitioners were found absconding during the period of investigation evading arrest. It has been projected on behalf of the petitioners that the petitioners are residents of localities other than the addresses mentioned in the charge-sheet and the I.O. had never visited the house of the two petitioners. It could be for such reason the warrant of arrest [NBWAs] were kept returning unexecuted on a number of occasions. The Trial Court did not receive any reason why the warrants of arrest [NBWAs] had returned unexecuted for reaching the requisite satisfaction that the warrantees really absconded or they would respond to summons.

15. The condition precedent for initiation of an action under Section 84, BNSS is prior issuance of warrant of arrest by the concerned Court. A plain reading of Section 84[1], BNSS shows that before ordering for publication of a proclamation, the Court should have reasons to believe [whether after taking evidence or not] that a person against whom warrant was issued has absconded or is concealing himself and that the warrant cannot be executed. Proclamation under Section 84 of the BNSS may be issued only when a Court has reason to believe that a person against who warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed. It is only after arriving at such satisfaction, the Court may proceed to publish a written proclamation. The satisfaction could be subjective but it cannot be without any material basis. Only after recording such

satisfaction, the Court can direct publication of a written proclamation requiring such person to appear at a specified place within a specified period.

16. It has been observed in **Srikant Upadhyay and others vs. State of Bihar, [2024] SCC OnLine SC 282**, that to reach a satisfaction that a person is absconding, evidence is required to the effect that the person concerned was knowing that he was wanted and also about pendency of warrant of arrest.

17. Such evidence was apparently missing before the Court on 17.12.2025 to reach a satisfaction that the petitioners were absconding despite knowing about the pendency of warrant of arrest. As such, the order of publication of proclamation under Section 84, BNSS is contrary to the mandate of law rendering it unsustainable in law.

18. There is nothing in the materials on record to indicate that the Trial Court had first issued summons against the two petitioners taking into consideration the provisions of Section 90, BNSS. The Trial Court from the Orders dated 05.08.2025 and 17.12.2025, there is nothing to suggest that the Trial Court has recorded that it had reasons to believe that the warrants were issued against the two petitioners had absconded or are concealing themselves and that the warrants could not be executed. The Court cannot guide itself by the mere observation of the I.O. in the Charge-Sheet that during investigation, they were absconding without reaching a satisfaction of its own. There would be myriad reasons an accused was not found during investigation.

19. Mr. Bora, learned Senior Counsel appearing for the petitioners has submitted that the petitioners are ready and willing to take participation in the proceedings of P.R.C. no. 156/2025 on and from 19.01.2026 onwards. The petitioners have an apprehension that before their appearance on 19.01.2026, they might be taken into custody in execution of the warrants of arrest [NBWA] issued against them. Mr. Bora has further submitted that the petitioners would be regular in their appearance in the Trial Court henceforth and would not make any endeavour to delay the proceedings/trial.

20. In view of the discussions made above and for the reasons stated therein, the Order dated 05.08.2025 and the Order dated 17.12.2025 are found to be ones which cannot stand the scrutiny of law and as such, the same are set aside. It is settled that if initial action is not consonance with law, all subsequent and consequential orders based on the initial order would fall through. If an order at the initial stage like the Order dated 05.08.2025 is bad in law then all further and orders consequent thereto have to be necessarily set aside. Therefore, the orders subsequent to 05.08.2025 whereby warrants of arrest [NBWAs] were issued against the petitioners are also set aside and quashed.

20. Having regard to the fact of non-appearance of the petitioners in the proceedings of P.R.C. no. 156/2025 till date, and the undertaking made by the petitioners, this Court is of the considered view that in the interest of justice the petitioners shall be directed to appear before the Trial Court on 19.01.2026. It is accordingly ordered.

21. If the petitioners appear and submit to the jurisdiction of the Trial Court within such period and prefer an application seeking their release on bail, the Trial Court shall consider such bail application on its own merits and in accordance with law. A warrant of arrest remains in force until it is cancelled by the Court which issued it, or until it is executed. The case of the petitioners is, therefore, to be treated as one where there areailable Warrants of Arrest [BWAs] of Rs. 5,000/- issued against the two petitioners.

22. The instant criminal petition stands allowed to the extent indicated above. No cost.

JUDGE

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