

GAHC010020532026



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

Case No. : Crl.Pet./138/2026

MAMTUL ALIAS MANTUL ALI
S/O SAHNUR ALI,R/O UDIANA,
BALAGAON, P.S. RANGIA
DIST. KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY, S NAZNIN,MR. I U CHOWDHURY

Advocate for the Respondent : PP, ASSAM,

BEFORE
HON'BLE MRS. JUSTICE MITALI THAKURIA

ORDER

17-02-2026

Heard Mr. HRA Choudhury, learned Senior Counsel assisted by Mr. I. U. Chowdhury, learned counsel for the petitioner and Mr. K. K. Das, learned Additional Public Prosecutor, for the State respondent.

This is an application filed under Section 528 BNSS read with Section 442 of the BNSS praying for setting aside and quashing of the impugned orders dated 08.01.2026 and 28.01.2026, passed by the learned Special Judge (NDPS), Kamrup, Rangia whereby Non-Bailable Warrant and Proclamation issued under Sections 73 and 84 BNSS respectively.

It is submitted by Mr. Choudhury, learned Senior Counsel that the FIR of the present case was lodged on 14.12.2025 and some of the co-accused were also arrested on the same day. But on 07.01.2026 within a very short period of time a petition under Section 75 BNSS was filed before the learned Special Judge (NDPS) praying for issuance of NBW against the present petitioner and without any report in regards to the Warrant, immediately on 28.01.2026 another prayer was made by the I.O. under Section 84 BNSS praying for issuance of Proclamation against the present petitioner. The prayer of issuance of the Proclamation was also allowed by the learned Trial Court, fixing the date for report on 19.02.2026.

It is further submitted by Mr. Choudhury, learned Senior Counsel that as per the provision of Section 84 BNSS the entire procedure needs to be followed within one month, but before expiry of 30 days the order of proclamation was issued and the date is also fixed on 19.02.2026.

Further it is submitted that on the strength of said Proclamation issued against the present petitioner, the I.O. is harassing the present petitioner and life threatening

is also given to him stating that he may be encountered, if he appears at the police station and at the same time, the notices were also issued for attachment of his immovable property. The petitioner also moved an application seeking anticipatory bail, which is pending before the Court. However, the petitioner is ready and willing to appear before the learned Trial Court, if he is remanded to judicial custody. But as the case is fixed on 19.02.2026 before the learned Special Judge, he submitted that atleast the order of issuance of Proclamation dated 28.01.2026 may be stayed, till next date of listing of the matter, so that he can obtain an order from this Court as well as from the learned Trial Court.

Mr. Das, learned Addl. PP submitted that it is a case of commercial quantity and from the record it reveals that sufficient quantity of the contraband was recovered from the possession of the petitioner.

Mr. Das further submitted that as per the provision of Section 84 BNSS only Proclamation has been issued by the learned Special Judge, the process is initiated but it has not been completed as submitted by the learned counsel for the petitioner.

He further submitted that at the stage of investigation also the Court has the power to issue Proclamation and it has to be completed within 30 days, but the Court has also the power to fix a date for appearance and report and in this case also the Court had fixed 19.02.2026 for the report of Proclamation. Till date there is no order of declaring the petitioner as a proclaimed offender and the process is only initiated.

Mr. Das further submitted that in absence of the record, he is not in a position to submit as to what steps has been taken by the Bench Assistant of the concerned Court or by police during the relevant period of time. However, he raised objection and submitted that no illegality has been committed by the learned Trial Court in issuing Proclamation on 28.01.2026 and submitted that it may not be stayed at this stage.

Considering the entire facts and circumstances of the case, the period of issuance of Proclamation, the date of FIR vis-à-vis other circumstances of this case,

this Court is of the opinion that till next date of listing the order dated 28.01.2026 for issuance of Proclamation against the present petitioner may be stayed.

In view of above, let the order dated 28.01.2026 be stayed till next date of listing.

The Registry is directed to call for the scanned copy of the TCR.

List this matter on **09.03.2026**.

JUDGE

Comparing Assistant