GAHC010253802026

2026:GAU-AS:17113

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

Case No. : Crl.Pet./1575/2026

SRI SHIVAM PANDEY
S/O GIRIJESH PANDEY, R/O EWS 437, RAPTI NAGAR, BEHIND SPORT COLLEGE, PHASE 4, GORAKHPUR, UTTAR PRADESH, PIN 273013

VERSUS

STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

BEFORE
HON'BLE MRS. JUSTICE SHAMIMA JAHAN

Advocate for the petitioner(s): Mr. S. Mitra, Advocate

Advocate for the respondent(s): Mr. R.J. Baruah, learned APP

Date on which judgment was reserved :**NA**

Date of pronouncement of judgment :**19.11.2026**

Whether the pronouncement is of the :

operative part of the judgment?:**NA**

Whether the full judgment has been :**Yes**

pronounced?

JUDGMENT AND ORDER (ORAL)

(Justice, J. Shamima Jahan)

By this application filed under Section 528 of BNSS, 2023, the petitioner has challenged two numbers of orders passed by the Court of Additional CJM in PRC Case No. 01/2026, corresponding to Haflong PS Case No. 59/2025, which are described as below:

i) order dated 08.10.2026 by which the learned Court had rejected two numbers of applications filed by the petitioner, one four taking part in court proceedings by electronic mode and the other for cancellation of Non Bailable Warrant of Arrest(NBWA) issued against him and for allowing him to remain on previous bail.

ii) order dated 30.10.2026 by which the surety bond submitted in connection with the bail order of the petitioner, was cancelled.

2. The case of the petitioner is that he hails from Gorakpur, Uttar Pradesh and a case was registered against him before the Officer-In-Charge of Haflong Police Station, in which it was alleged by the informant that he was asked to invest in the petitioner's company with the further promise that the informant on investing would be given discounts in digital currency. It was further alleged that informant invested an amount of Rs. 7,50,000/- and it was found out later that he was cheated.

3. In connection with the said FIR, the petitioner preferred a bail application before the Hon'ble High Court and the High Court by order dated 07.01.2026 allowed the petitioner to go on bail on certain conditions and one of the condition was that the petitioner should not abscond. In the said bail order, it was further stipulated that during the pendency of the said bail application, charge sheet was submitted against the petitioner. It is the further case of the petitioner that the said bail order was placed before the Court of Sub Divisional Judicial Magistrate, Dima Hasao, who on being satisfied with the bail bond and fulfilment of other conditions, accepted the bail bonds and issued release order in respect of the petitioner. Thereafter, on the dates fixed by the Trial Court, the petitioner initially appeared but on subsequent dates, he was found absent but steps were taken by him. The dates when he remained absent were on 28.01.2026, 06.02.2026 and 19.02.2026. The reason shown for the absence of the petitioner was that the petitioner was suffering from ailment. On 05.03.2026, the Trial Court on finding that the petitioner had remained absent for three consecutive dates without any valid reason, had issued bailable warrant of arrest and thereafter, fresh bailable warrant of arrest was issued

against him on the ground that no report had been received. Thereafter by order dated 01.07.2026, the Trial Court had issued bailable warrant of arrest of Rs. 5000/- against the petitioner and thereafter, on 04.08.2026, the Trial Court on being confronted with a petition for adjournment, showing medical reasons, rejected the said application on the ground that no medical document was annexed. The Trial Court by the said order issued BWA of Rs. 10,000/- and on finding that the said BWA was executed and on further finding that the accusedwas not present, the Court by order dated 20.08.2026 issued NBWA against him.

4. The petitioner further stated that issuance of NBWA by the Trial Court was put to challenge before the High Court by preferring a petition under Section 528 of the BNSS, which was registered as Criminal Petition No. 1379/2026 and this Court by order dated 05.10.2026 had directed the order issuing NBWA to be kept in abeyance and further directed the petitioner to apply for regular bail.

5. Pursuant thereof, the petitioner filed an application before the Trial Court to allow him to appear by electronic mode and to recall the NBWA and also to allow him to remain on previous bail.

6. The said application was taken up by the Trial Court and the same were rejected by order dated 08.10.2026 which is challenged in the present petition. In the said order, the Trial Court observed that after the bail order dated 07.01.2026, the petitioner remained absent continuously and as such, BWA and NBWA were issued. It was also observed that the High Court by order dated 05.10.2026 had directed the petitioner to apply for regular bail. However, it was found out by the Court that the said direction was not complied with by the petitioner. The Court on the said observation and on finding that the petitioner hails from Uttar Pradesh, directed him to appear before the Court on

30.10.2026. By the said order, notice was also issued to the bailors for their personal appearance.

7. Subsequently, on 30.10.2026, the petitioner filed an application for adjournment with the further prayer to keep the NBWA issued against him in abeyance. The Trial Court on finding that the petitioner is absent in spite of its order as well as the order of Hon'ble High Court, cancelled the surety bond by order dated 30.10.2026 and issued NBWA against the petitioner. This order is also put to challenge by the petitioner.

8. The learned Counsel for the petitioner submits that petitioner was admittedly released on bail by order dated 07.01.2026 and that issuance of BWA or NBWA was incorrect on the part of the Trial Court. He further submits that petitioner was in fact suffering from ailments and had produced medical certificates to that effect. He also submits that although the High Court by order dated 05.10.2026 had directed the petitioner to apply for regular bail, but the necessary implication would be that the Trial Court should allow the petitioner to remain on previous bail.

9. On the other hand, learned Additional Public Prosecutor for the State submits that there is no infirmity in the order passed by the trial Court in as much as the petitioner failed to appear before the Trial Court on various dates and also he did not apply for regular bail in compliance of the High Court's order.

10. It is noticed that petitioner was enlarged on regular bail by order dated 07.01.2026 by this Court and the condition attached to the said order was that he should not abscond and he should make himself available during trial. It is however, noticed that although petitioner was present on two days i.e. on

12.01.2026 and 22.01.2026 but thereafter continuously, the petitioner was absent and although steps were taken showing that he is not well but no proper substantiating materials were produced. Subsequent thereto, the petitioner was absent without steps and as such, the Trial Court initially issued BWA on a number of occasions and thereafter left with no other alternative issued NBWA. Further, this Court by order dated 05.10.2026 on an application for setting aside the issuance of NBWA had directed the petitioner to apply for regular bail by keeping the order issuing NBWA in abeyance. However, the petitioner did not apply for regular bail before the Court and instead filed an application for allowing him to remain on previous bail and also to allow him to appear through electronic mode. The Trial Court did not allow the said applications on the ground that despite the High Court's order, petitioner did not appear but the Trial Court was magnanimous enough to allow the petitioner to appear on the subsequent date, since he hails from the State of Uttar Pradesh. Since there was no question of allowing the petitioner to remain on previous bail, the said Court disallowed. However, on the subsequent day also i.e. on 30.10.2026, the petitioner did not appear and an application was made for adjournment and as such, the Trial Court had discharged the bailors for their inability to produce the petitioner.

11. It is provided under Section 530 of BNSS, 2023 that trial, inquiries and proceedings can be held in electronic mode via electronic communication or audio video means if on the facts and circumstances, it is seen by the Court that the same is essential. It is stated by the petitioner that he is suffering from various ailments and had also annexed the medical documents to that effect. It is settled by the Apex Court that courts can allow participation of the accused person through electronic or video conferencing based on the case specific

approval and valid justification while protecting fair trial rights. Since it is placed by the petitioner that he is suffering and that he is in the State of Uttar Pradesh, this Court, in the facts of the said case, directs the Trial Court to consider the prayer of the petitioner to appear through the electronic mode. It is also directed that the petitioner should file an application for regular bail as directed by this Court by order dated 05.10.2026 and the said application be considered by the Trial Court.

12. As such, the petitioner is at liberty to file necessary application afresh both for appearing through electronic mode and to pray for regular bail before the Court of Additional CJM, Haflong, Dima Hasao, which will he considered by the Court as per law.

13. With these observations, petition is disposed of.

JUDGE

Comparing Assistant