



IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLMC NO.1806 of 2026

(In the matter of application under Section 528 of BNSS, 2023).

Trinath Guru and another ... ***Petitioners***

-versus-

State of Orissa ... ***Opposite Party***

For Petitioner : ***Mr. K. Rashid, Advocate***

For Opposite Party : ***Mr. A. Mohanty, Addl. PP***

CORAM: JUSTICE G. SATAPATHY

DATE OF HEARING & JUDGMENT:09.06.2026(ORAL)

G. Satapathy, J.

1. At the outset, Mr. K. Rashid, learned counsel for the Petitioners by filing a memo which is taken on record prays to not press the CRLMC for Petitioner No. 1 ***TosharamNaik @ Anish***. Accordingly, the CRLMC by Petitioner No. 1 ***TosharamNaik @ Anish*** stands disposed of as not pressed and the present CRLMC is only confined to Petitioner No.2 Trinath Guru.

2. The petitioner **Trinath Guru** by invoking the provision of Section 528 of BNSS has challenged the impugned order which reads as under:-



"DT:06.05.2026:

Accused persons are absent. SR of accused persons namely Trinath Guru, Deepak Khanda, Arupasindhu Bag, Tosharam Naik @ Anish and Nirakar Bag are back after due service. No steps taken by the counsels. None appeared after (illegible) repeated calls. Hence, issue NBW. Put up on 9.05.2026 for production of the accused persons.

Dictated

Sd/-

CJ(JD)-cum-JMFC, Lakhanpur

3. It needs to be stated here that looking at the grievance of the petitioner and the ramification of the impugned order, the present CRLMC stands disposed of at the stage of admission with the consent of the learned counsel for the parties.

4. Heard, Mr. K. Rashid, learned counsel for the petitioner and Mr. Arabinda Mohanty, learned Additional Public Prosecutor in the present matter and perused the record.

5. A plain glance of the impugned order reveals that on the date fixed for appearance of the petitioner, he was found absent on repeated calls and, accordingly, NBWA was issued against the petitioner.



Section 355 of BNSS confers wide discretion on the Court to dispense with the personal attendance of the accused even on the date fixed for holding inquiry or trial, but issuance of NBWA against accused is not mandatory, even he is not present on the date fixed for the aforesaid purposes and it is the discretion of the Magistrate to dispense with the personal attendance of the accused and proceed with such inquiry or trial in his absence and he may at any subsequent stage of the proceeding directs the personal attendance of such accused. Besides, Section 482(3) of BNSS provides that if a Magistrate taking cognizance of such offence decides that a warrant should be issued in the first instance against that accused person, he shall issue aailable warrant in conformity with the direction of the Court under sub-section-1 to Section 482 of BNSS. In the present case, the accused petitioner-Trinath Guru was on bail being granted to him on 23.12.2025 and the petitioner has availed such bail by furnishing the bail bonds, however, the impugned order does not disclose what was the necessity to issue NBWA against



the petitioner. In a situation like this, the Magistrate or the concerned Court may either issue notice to the bailer(s) or issue BW against the accused person, who has not appeared before it after receiving the summon/notice, but instead of resorting to said procedure, the learned JMFC, Lakhanpur has straight away issued NBWA against the petitioner Trinath Guru and others. Liberty of a person cannot be taken away without proper procedure or it should not be dealt with lightly because custody brings lot of harassment and inconvenience to such persons deprived of the liberty. Besides, the impugned order does not reveal any compelling reason to issue NBWA. Besides, law is very clear that bail once granted should continue till it is cancelled or order granting bail is set-aside.

6. Additionally, the impugned order does not reveal about issuance of notice to the bailer(s). In the aforesaid facts and situation and taking into account the ramification of the impugned order and to secure the ends of the justice and to give effect to the order of the Court, this Court considers that the impugned order



does not stand to the legal scrutiny and is liable to be quashed.

7. In the result, the impugned order dated 06.05.2026 *qua* the petitioner Trinath Guru is, hereby, quashed and the petitioner is allowed to continue his previous bail, but he has to regularize the proceeding by appearing before the Court on the next date fixed for it.

(G. Satapathy)
Vacation Judge

*Orissa High Court, Cuttack,
Dated the 9th day of June, 2026/Subhasmita*