

GAHC010117382026



2026:GAU-AS:9771

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

Case No. : Crl.Pet./844/2026

SHRI ASEM KANAN SINGH ALIAS ASHEM KANAN SINGH
S/O ASEM INDRAMANI SINGH, AGED ABOUT 46 YEARS, RESIDENT OF
YAIRIPOK LAIMANAI, ANDRO, P.O. AND P.S. ANDRO, IMPHAL EAST
DISTRICT, MANIPUR, IMPHAL 795149. PRESENT ADDRESS URIPOK SORBO
THINGEL, P.O. IMPHAL, P.S. LAMPHEL, IMPHAL WEST DISTRICT,
MANIPUR

VERSUS

THE UNION OF INDIA
REPRESENTED BY SPECIAL P.P. CENTRAL BUREAU OF INVESTIGATION

Advocate for the Petitioner : MR. M G SINGH, MR. K BARMAN, MR. R SEKHAR
Advocate for the Respondent : SC, CBI,

BEFORE

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved	:	18.06.2026
Date of pronouncement of judgment	:	17.07.2026
Whether the pronouncement is of the		
Operative part of the judgment	:	NA
Whether the full judgment has been		
Pronounced	:	Yes

JUDGMENT & ORDER (CAV)

Heard Mr. M.G. Singh, learned counsel for the petitioner. Also heard Ms. M. Kumari, learned counsel for CBI.

2. This application under Section 528 of the BNSS, 2023 has been filed by the petitioner praying for quashing of the Order dated 03.06.2026 passed by the learned Special Judge, CBI, Guwahati, Assam in connection with RC6(S)/2023/CBI/SCB/Kolkata, whereby the prayer for issuance of production warrant was allowed and by the same order, an application by the CBI for re-arresting the petitioner was allowed.

3. The CBI has filed a written objection to the instant criminal petition opposing the prayer of the petitioner.

4. On 17.01.2026, while the petitioner was already in custody in connection with another case, namely RC-29(S)/2023/CBI/SCB/Kolkata, the Investigating Officer, on 17.01.2026, preferred an application before the Learned Chief Judicial Magistrate, Kamrup (Metro), Guwahati seeking issuance of a production warrant for producing the Petitioner before the said Court in connection with RC-6(S)/2023/CBI/SCB/Kolkata dated 09.06.2023.

5. The said application was allowed by Order dated 17.01.2026 passed by the learned CJM, Kamrup (M) pursuant to which the petitioner was formally arrested in RC-6(S)/2023/CBI/SCB/Kolkata purportedly on the strength of another order of even date permitting such arrest shown to have been passed at 12:30 PM. The petitioner was present and heard through video conferencing from Central Jail, Guwahati. However, in the arrest memo, the time of arrest was shown as 12:25 PM on that date,

i.e., 17.01.2026.

6. Contending that the arrest of the petitioner on 17.01.2026 at 12:25 PM was illegal and without authority of law, inasmuch as, the order permitting arrest was passed only at 12:30 PM., a bail application was preferred before the learned Special Judge, CBI which court accepted the said contention and granted bail to the petitioner by order dated 29.05.2026 in Misc. Case (CBI) No. 02/2026. However, in the said order it was observed as follows:

"In view of the above, though by today's order dated 29.05.2026, the bail of the accused has been granted in view of technicalities and procedural defect depriving the liberty of the accused, CBI (investigating authority) shall not be precluded from again approaching the Court for issuance of production warrant and to seek arrest of the accused in connection with the present case by following the procedure established by law."

7. Subsequently, the CBI filed an application on 02.06.2026 seeking issuance of a production warrant against the petitioner and permission to re-arrest him in connection with RC-6S/2023/CBI/SCB/Kolkata i.e., the later case.

8. It is pertinent to mention here in that the petitioner continued to remain in custody even after grant of bail by Order dated 29.05.2026, as the bail bond submitted by him was found to be deficient/defective and subsequently too, because no bail bond was presented on account of undertaking given by the petitioner not to submit bail bond, till disposal of the aforesaid application for production warrant and re-arrest was disposed of by the Court.

9. By Order dated 04.06.2026, the aforesaid application of the CBI was allowed. The production

warrant as sought for was issued and the CBI was permitted to re-arrest the petitioner and accordingly upon being re-arrested was again remanded to custody till 18.06.2026 and such remand of the petitioner was extended thereafter.

10. It is the submission of the learned counsel for the petitioner that the CBI ought to have first applied for cancellation of bail and only when a formal order cancelling the bail was passed, an application for production warrant and re-arrest could have been made. That, according to learned counsel for the petitioner is the “procedure established by law”, that was referred to in the Order dated 29.5.2026, whereby, bail was granted to the petitioner along with the aforesaid liberty to the CBI.

11. In support of the aforesaid contention, learned counsel has referred to the decision of the Hon’ble Apex Court in ***Pogadadabnda Revathi & Anr. vs The State of Telangana*** reported in **2026 INSC 75** wherein it was held as follows:-

“16. It is pertinent to mention that the accused-appellants had already been enlarged on bail. Granting police custody for a period of three days would necessarily require the accused-appellants to be taken back into custody and curtailing their liberty for that period of 3 days, which would, in effect, tantamount to cancellation of bail in an indirect manner, without adherence to the settled legal parameters governing cancellation of bail.

17. It is a settled position of law that where the investigating agency seeks police remand of an accused who has already been enlarged on bail, the proper and legally permissible course is to first seek cancellation of bail in accordance with law and only thereafter apply for police custody. The scheme of criminal procedure does not countenance the grant of police remand of an accused who continues to

enjoy the protection of bail, as such a course would effectively defeat and nullify the order granting bail.

18. In this regard we may refer to Satyajit Ballubhai Desai v. State of Gujarat reported in (2014) 14 SCC 434 wherein this Court observed as follows: -

"19. Be that as it may, the fact remains that the learned Magistrate as also the High Court appear to have adopted a casual or a mechanical approach permitting police remand of the appellants without scrutinising the reasons, ignoring the fact that the appellants had already been enlarged on bail by the High Court and the dispute with the complainant Surjaben who had lodged the complaint had already been settled. Thus, the existing facts and circumstance prima facie were clearly not so grave or extraordinary justifying police remand which could have been overlooked by the High Court even though it was for three days only as it was bound to have ramifications not only affecting the liberty of the person who was already granted bail but also the Magistrate nullifying the order of the High Court granting bail, even if it was for a period of three days only.

20. In fact, when the accused had been enlarged on bail by the High Court, it was all the more essential initially for the police authorities and thereafter by the Magistrate to disclose and assign convincing reasons why investigation could not proceed further without seeking police remand of the accused and in case police remand was sought on any ground of interference with the investigation in any manner alleging influencing the witnesses or tampering with the evidence in any manner, straightaway it could have been a case for cancellation of bail of the accused and the Magistrate could have directed the police authorities to approach the High Court seeking cancellation or any other appropriate direction.

21. *What is sought to be emphasized is that the disclosure of reasons by the Magistrate allowing police remand especially in a matter when the accused has been enlarged on bail by the High Court is all the more essential and cannot be permitted in the absence of a valid and sufficiently weighty reason seeking such custody, as it clearly affects the liberty of an individual who has been enlarged on bail by a court of competent jurisdiction."*

12. Learned CBI counsel submitted that the Order dated 29.05.2026 granting bail to the petitioner itself permitted the CBI to apply for production warrant and for re-arrest of the petitioner, which order was not challenged and therefore, it is now not open for the petitioner to challenge the subsequent order permitting the re-arrest of the petitioner. In this regard, learned CBI counsel has, in addition to filing written objection, relied upon the decision of the Hon'ble Apex Court in ***Sumit vs. State of UP & Anr.*** reported in **2026 INSC 145**, wherein it was held as follows:-

“34. *In such circumstances referred to above, we arrive at following conclusions in respect of a circumstance whereafter the grant of bail to an accused, further cognizable and non-bailable offences are added:-*

(i)

(ii)

(iii) *The Court, in exercise of its power under Sections 437(5) or 439(2) of Cr.P.C. respectively, can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The Court in exercise of its power under Section 437(5) as well as Section 439(2) respectively can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-cognizable offences which may not be necessary always with order of cancelling of earlier bail."*

13. Sections 437(5) and 439 (2) of Cr.PC provides as follows:-

“437. When bail may be taken in case of non-bailable offence.—

(5) Any Court which has released a person on bail under sub-section (1) or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

439. Special powers of High Court or Court of Session regarding bail.—

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.”

14. Both the aforesaid provisions concern accused persons who have been “released” on bail and therefore, the question of curtailment of their liberty, for however short a period, arises when an order permitting re-arrest is passed. That was the issue that concerned the Hon’ble Apex Court in ***Pogadadabnda Revathi (Supra)***.

15. In ***Sumit (Supra)***, the issue was whether cancellation of bail was required when additional/grave charges were added after release of the accused on bail, in order for him to be taken into custody again, which was answered in the negative by the Apex Court. It was held that cancellation of bail was a pre-requisite only when re-arrest was sought after release on bail, the charges remaining the same.

16. In the instant case, the petitioner was never released, pursuant to the order granting bail due to non-submission or submission of bail bond that was found to be deficient. Nevertheless, even in such

a scenario, an order for re-arrest would have the effect of curtailing his prospective liberty, which would have been his, immediately upon submission of satisfactory bail bonds and their acceptance, which bonds were otherwise ready for submission. The question therefore is limited to whether, in circumstances where bail is granted on technicalities, such as the one obtaining in the present case, with liberty to seek re-arrest, a separate order of cancellation of bail is to be passed, preceding the order issuing production warrant and granting permission for re-arrest.

17. The grounds on which cancellation of bail under Section 437 (5) and Section 439(2) of Cr.PC (now Section 480(5) of BNSS and Section 483(3) of BNSS) can be sought and granted are fairly well settled. As held by the Hon'ble Apex Court in ***Dolat Ram vs. State of Haryana*** reported in (1995) 1 SCC 349, such bail once granted, can be cancelled when the accused violates the express terms/conditions of the bail or attempts to threaten or intimidate the witnesses or creates obstacles in the proper investigation and trial of the case and the like. It was held as follows:-

“4.Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the

accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted.”

18. The above grounds of cancellation of bail arise subsequent to the grant of bail, which therefore requires the cancellation of bail in order to commit the accused to custody in order to safeguard the smooth flow of the process of the law and the Court and in order to ensure justice. It is the conduct of the accused which calls for cancellation of an otherwise correct and valid bail order. However, when the investigating agency seeks to re-arrest an accused granted bail on technical grounds, there being valid grounds for his initial arrest, by following all requirements of legal procedure, the earlier order of granting bail cannot stand in the way of such re-arrest and therefore, no requirement of cancellation of the said order can be said to arise. This is for the reason that a decision to grant bail on merits is fundamentally different from one based on technicalities or curable defects noticed in the prior arrest exercise or procedure adopted, leading to the arrest. This principle has been recognized in ***Rakesh Kumar Paul vs. the State of Assam*** reported in (2017) 15 SCC 67 as well as in ***Mihir Rajesh Shah vs. State of Maharashtra & Anr.*** reported in (2025) INSC 1288.

19. In ***Rakesh Kumar Paul*** (Supra), the principle that after grant of default bail, the accused can be re-arrested upon submission of charge sheet which disclosed offenses of a cognizable nature has been laid down by the Hon'ble Apex Court. In ***Mihir Rajesh Shah*** (Supra), it has been held by the Hon'ble Apex Court:

"55. It goes without saying that if the abovesaid schedule for supplying the grounds of arrest in writing is not adhered to, the arrest will be rendered illegal entitling the

release of the arrestee. On such release, an application for remand or custody, if required, will be moved along with the reasons and necessity for the same, after the supply of the grounds of arrest in writing setting forth the explanation for non-supply thereof within the above stipulated schedule. On receipt of such an application, the magistrate shall decide the same expeditiously and preferably within a week of submission thereof by adhering to the principles of natural justice."

20. As is discernable from the above, it is not a principle of law that in all cases, an order of re-arrest must necessarily be preceded by an order of cancellation of bail. Cases in which bail is granted on certain technicalities, such as the present one, belong to a category separate from the ones granted on considerations of merit and therefore, considering the decision of the Hon'ble Apex Court in ***Mihir Rajesh Shah (Supra)***, no separate order of cancellation of bail is required to be passed in order to enable the investigating agency to re-arrest the petitioner after being granted bail on technical grounds. In fact, Section 437(5)/ 439(2) Cr.P.C does not prescribe any requirement or procedure for cancellation of bail before direction is made to take the accused into custody. Therefore, the procedure established by law as mentioned in the order granting bail to the petitioner cannot be construed as a reference to the practice and procedure of filing of an application and passing of a formal order for cancellation of bail. The filing of an application for issuance of production warrant in respect of an accused in custody is itself a procedure established by law. All that is required is that while considering such an application, the principles of natural justice are to be adhered to by the Court concerned, which has been done in the present case.

21. In view of the above discussions, I do not find any infirmity in the impugned order and accordingly, the criminal petition stands dismissed.

JUDGE

Comparing Assistant