



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

AB. No. 12 of 2026

Date of Decision: 30.04.2026

Shri. Balwan Bhama
 Director of M/s Vaishno Devi Traders Pvt. Ltd,
 S/o Late ML Bhama
 R/o House No. 35-A, Ground Floor,
 Near Income Tax Colony,
 Bangaon, Beltola,
 Guwahati, Assam – 781028.

.... Petitioner

Vs.

State of Meghalaya,
 Represented by Secretary, Home Department
 Government of Meghalaya

.... Respondent

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

- | | | |
|-----|---|--------|
| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

Appearance:

For the Petitioner/Appellant(s) : Mr. A. Ahmed, Adv.
 Mr. M. Sarkar, Adv.

For the Respondent(s) : Mr. N.D. Chullai, AAG with
 Mr. E.R. Chyne, GA.

JUDGEMENT AND ORDER

1. Heard Mr. A. Ahmed, learned counsel for the petitioner, who has submitted that this is an application under Section 482 of the BNSS, 2023,



seeking grant of pre-arrest bail on behalf of the petitioner, who is apprehending arrest in connection with Gasuapara P.S Case No. 04 (07) 2023, under Section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR).

2. The learned counsel has submitted that an FIR dated 03.07.2023, has been lodged by the Additional Deputy Commissioner, South Garo Hills, Baghmara, the same addressed to the Superintendent of Police, South Garo Hills, wherein, it was informed that on a Joint Magisterial Team, deputed to conduct raids, it was found out that around 5711 MT of coal was dump illegally in and around Gasuapara Land and Customs Station. The said coal was then seized by the Magistrate from one firm named Vaishno Devi Traders Pvt. Ltd., which belongs to the petitioner herein. The said seizure was allegedly made during the said raid conducted on 27.06.2023 and 30.06.2023.

3. The learned counsel also submits that the fact of the matter is that, the petitioner has deposited or unloaded the said coal at the Gasuapara Land and Customs Station, which coal has been legally procured through e-Auction and documentary evidence of the same, including the Tax Invoice, the order to transport the said coal, such order dated 17.04.2023 was issued by the Deputy Commissioner, South Garo Hills, wherein the approved route for transport of such coal is from Madan Kyor Pailiang-Nongstoin to Bangladesh via Gasuapara.



The relevant authority for such transport is also evident from the certificate issued by the Director of Mineral Resources, Meghalaya, Shillong, being No. DMR/R/CIL/A/3296/2023/22 dated (illegible) 2023 (Annexure-7 of this petition).

4. It is the further submission of the learned counsel that the petitioner has approached this Court, by way of a Criminal Petition with a prayer to quash the said FIR, however, this Court vide order dated 13.02.2025 in CrI. Petn. No.27 of 2024 has rejected the same. The petitioner has then preferred a Special Leave Petition before the Hon'ble Supreme Court and the same was dismissed and disposed of vide order dated 15.04.2025 passed in Special Leave Petition (Criminal) Diary No(s). 16772/2025. However, the petitioner was granted liberty to produce all materials along with representation before the Investigating Officer (I/O). Accordingly, on 28.05.2025, the petitioner has submitted a number of documents before the I/O.

5. In spite of this, the I/O has completed his investigation and has filed the charge sheet on 15.09.2025 with a remark that the petitioner herein has failed to respond to the notices issued against him and has not appeared before him, thereby, he was declared to be an absconding accused. In fact, the petitioner has never received any notices issued on him. It was only when the learned Special Judge, MMDR has taken cognizance of the case and issued summons on the



petitioner that he has entered appearance through his counsel. However, being apprehensive of arrest, in the event, he appeared before the Trial Court, the prayer for grant of pre-arrest bail is made herein, further submits the learned counsel.

6. The learned counsel has also referred to the case of **Bharat Choudhary and Anr. v. State of Bihar, reported in (2003) 8 SCC 77**, wherein it was held that a court has either taken cognizance of the complaint or the investigating agency has filed a charge sheet, would not by itself, prevent the courts concerned from granting anticipatory bail in appropriate cases. If allowed to go on pre-arrest bail, the petitioner would comply with any conditions that this Court may imposed, submits the learned counsel.

7. Mr. N.D. Chullai, learned AAG assisted by Mr. E.R. Chyne, learned GA appearing for the State respondent, has raised a preliminary issue on maintainability of this application by submitting that the petitioner ought not to have approached this Court in the first instance, but should have gone before the Sessions Court for the prayer made herein. This contention is supported by the authority in the case of **Jagdeo Prasad v. State of Bihar and Ors, 2025 SCC Online 2108**, para 6, wherein the Apex Court has observed that while the scheme of Criminal Procedure Code, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) provides concurrent jurisdiction to the High Court and Sessions Court for



entertaining application for anticipatory bail, the High Court should always encourage exhausting an alternative/concurrent remedy before directly interfering itself. In this view of the matter, the learned AAG has submitted that the petitioner herein ought to have filed such petition before the Sessions Court before approaching this Court.

8. On the merits of the case, the learned AAG has submitted that from the papers produced by the petitioner in this petition, at page 136 (Annexure-20) is seen the order of the Hon'ble Supreme Court dated 15.04.2025, directing the petitioner herein to produce whatever documents he wishes to rely upon to the I/O. At page 137 (Annexure-21) is found the copy of a letter dated 28.05.2025 addressed to the I/O, with a list of documents said to have been submitted before him. However, on perusal of the said annexure, it is seen that there is no signatory of the person who has addressed such communication, as such, it can be inferred that no such documents have been produced or filed before the I/O. This fact, have been confirmed by the I/O himself, who has observed in his charge sheet (page 143 of this petition) that “... *the accused neither appeared nor produced any such documents before the Investigating Officer...*”. This according to the learned AAG reflects the callous attitude of the petitioner, as such, he is not entitled to be given any relief in this case.



9. In reply, the learned counsel for the petitioner has submitted that as regard the issue of maintainability on the grounds as relied upon by the learned AAG, this issue has also been received the notice of the Hon'ble Supreme Court in a case emanating from the Gauhati High Court, wherein in the case of **Sri Kwmta Gwra Brahma v. State of Assam**, the Court vide order dated 10.04.2015 in BA 3024/2014 at para 19 of the court has made the observation “... *that normally a person/accused should exhaust his remedy u/s 438 or 439 of the CrPC before the Sessions Judge before making an application before the High Court u/s 438 or 439 of the CrPC...*”. This order was taken up on appeal before the Hon'ble Supreme Court by the Gauhati High Court Bar Association and at the outset, the Hon'ble Supreme Court vide order dated 01.09.2017 in Petition(s) for Special Leave to Appeal (Crl.) No(s). 6457/2015 has kept the operation of the impugned order in abeyance.

10. The Hon'ble Supreme Court in the case of **Mohammed Rasal. C and Anr. v. State of Kerela and Anr.**, vide order dated 08.09.2025 in Petition(s) for Special Leave to Appeal (Crl.) No(s). 6588/2025, at para 8 of the same, had expressed the opinion that for a prayer of grant of pre-arrest bail, the parties are required to first approach the Sessions Court. However, perhaps on the court being made aware of a similar matter pending before the co-ordinate bench, wherein an order of stay has been passed, vide order dated 12.11.2025, the matter



was referred to a three-judge bench to consider the issue in question. Since it was the same bench which has passed the said order in the case of Jagdeo Prasad (supra), therefore the order dated 12.11.2025 would hold the field till the matter is finally decided by the three-judge bench, submits the learned counsel for the petitioner.

11. In this context, the learned counsel has submitted that since the order dated 01.09.2017, passed in the Gauhati High Court Bar Association case has set a precedent, the Hon'ble Supreme Court in the case of **National Insurance Company Ltd. v. Pranay Sethi & Ors, (2017) 16 SCC 680**, at para 21 and 28 of the same has observed as follows:

“21. In *Chandra Prakash v. State of U.P. (2002) 4 SCC 234*, another Constitution Bench dealing with the concept of precedents stated thus: (SCC p. 245, para 22)

“22. ...The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court. It is in the above context, this Court in *Raghubir Singh, (1989) 2 SCC 754* held that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or smaller number of Judges. ...”

Be it noted, *Chandra Prakash, (2002) 4 SCC 234* concurred with the view expressed in *Raghubir Singh Singh (1989) 2 SCC 754* and *Pradip Chandra Parija, (2002) 1 SCC 1*.

28. In this context, we may also refer to *Sundeeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC 623* which correctly lays



down the principle that discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench. There can be no scintilla of doubt that an earlier decision of co-equal Bench binds the Bench of same strength. Though the judgment in *Rajesh v. Rajbir Singh*, (2013) 9 SCC 54 was delivered on a later date, it had not apprised itself of the law stated in *Reshma Kumari v. Madan Mohan*, (2013) 9 SCC 65, but had been guided by *Santosh Devi v. National Insurance Co. Ltd.* (2012) 6 SCC 421. We have no hesitation that it is not a binding precedent on the co-equal Bench.”

12. It is reiterated that under such circumstances, the order passed in the case of Jagdeo Prasad (*supra*) as well as that passed in Mohammed Rasal. C (*supra*) being delivered on a later date, such order will not be a binding precedent, on the co-equal Bench.

13. On consideration of the contention and submission made by the learned counsels for the parties, this Court is called upon to firstly decide on the issue of maintainability, that is, if the petitioner has to be called upon to first exhaust his remedy before the Sessions Court for his prayer for grant of pre-arrest bail and in failure to get favourable result, to then approach the High Court.

14. As has been pointed out by the learned AAG, in the case of Jagdeo Prasad as well as in the case of Mohammed Rasal. C (*supra*), the Supreme Court



has expressed its opinion that the petitioner in an application for grant of pre-arrest bail, should first approach the Sessions Court, then the High Court. Though in the case of Mohammed Rasal. C, the matter was referred to a three-judge bench.

15. However, in the case of Gauhati High Court Bar Association (supra), when the High Court has expressed the same opinion as the one set out in the case of Jagdeo Prasad and Mohammed Rasal. C, the Supreme Court has stayed the operation of such order. This order was passed in the year 2017, whereas the order in the two other cases referred to herein are of the year 2025 and 2024.

16. On this issue, the reference to the case of Pranay Sethi (supra) is relevant as far as the approach of a court as regard consideration of binding precedent is concerned, coupled with the fact that there is reference made to a larger bench when conflicting views taken by the Supreme Court was noticed. However, as far as the High Court is concerned, the decision in the case of **State (UT of Ladakh) v. J&K National Conference, (2024) 18 SCC 643**, is applicable when reference to binding precedent and conflicting decisions is made. Paragraph 35 of the said judgment reads as follows:

“35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across



examples of High Courts refusing deference to judgments of this Court on the score that a later coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in *National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.”

17. In view of the above, this Court need not go any further, but to agree with the learned counsel for the petitioner that the law as it stands today does not bar any petitioner to prefer any application for grant of pre-arrest bail, either before the Sessions Court or before the High Court. The approach being left to the discretion of the parties concerned.

18. Accordingly, this petition is found maintainable. As to the argument on merits, the fact that the case wherein the petitioner herein is involved has reached the stage of trial, the investigation having been completed and the charge sheet also filed, there appears to be no further requirement of custodial questioning of the petitioner. The fact that the petitioner is to ensure appearance before the court in course of such trial, the same could be enforced by imposition of certain conditions on grant of bail.



19. Accordingly, the prayer made in this petition is allowed, in the event the petitioner is arrested, he is to be immediately released on bail, on the following conditions:

- i) That he shall not abscond or tamper with the evidence or witnesses;
- ii) That he shall cooperate with the Investigating Officer;
- iii) That he shall not leave the jurisdiction of India during pendency of the trial. If he requires to travel outside India, he should seek due permission from the Trial Court; and
- iv) That he shall bind himself on a personal bond of ₹ 50,000/- (Rupees fifty thousand) only with one surety of like amount to the satisfaction of the Trial Court.

20. Petition disposed of. No costs.

Judge