GAHC010144292026

2026:GAU-AS:9761

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

Case No. : Bail Appln./1927/2026

SHUVASHISH GHOSH ALIAS SHUBASHISH GHOSH
S/O LATE SWAPAN KUMAR GHOSH,RESIDENT OF VILLAGE BILPAR,
SILCHAR ROAD, GHAT LINE,P.S. SRIBHUMI,DISTRICT SRIBHUMI, ASSAM.

VERSUS

THE STATE OF ASSAM
THROUGH THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY, MR. R A CHOUDHURY
Advocate for the Respondent : PP, ASSAM,

BEFORE

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

ORDER

17.07.2026

Heard Mr. R.A. Choudhury, learned Senior Counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the Sate.

2. This is an application filed under Section 483 of the BNSS, for praying for grant of bail to the petitioner who was arrested on 08.06.2026. in connection with Sribhumi P.S. Case No. 36/2026 under Section 61(2)/323/49/262 of the BNS read with Section 42 of the Prisoner Act, 1894 and added Section

7 of the Prevention of Corruption Act, 1988.

3. It is submitted by the learned counsel for the petitioner that the petitioner was issued a notice under Section 35(3) of the BNSS in connection with the present case, pursuant to which she appeared before the Investigating Officer and was thereafter arrested, although no new grounds had arisen justifying such arrest.

4. In this regard, the learned counsel has referred to the decision of the Apex Court in the case of ***Satender Kumar Antil Vs Central Bureau of Investigation*** reported in ***(2026) SCC Online Standing Counsel 162,*** wherein, it has been held as follows:

> "*30. While making an arrest under Section 35(6) of the BNSS, 2023, after the stage of issuing a notice seeking presence under Section 35(3) of the BNSS, 2023, the circumstances and factors that were in existence at the time of issuing the said notice shall not be taken into consideration by a police officer while making an arrest subsequently. In other words. for effecting an arrest under Section 35(6) of the BNSS 2023, it must be based upon materials and factors which were not available with the police officer at the time of issuing a notice under Section 35(3) of the BNSS, 2023. Therefore, the power of arrest under Section 35(6) of the BNSS, 2023 is to be exercised rather sparingly, only under circumstances as aforementioned."*

5. A perusal of the relevant portion of the Case Diary wherein the reasons for issuing notice under Section 35(3) of the BNSS to the petitioner were recorded, as compared with the grounds of arrest subsequently mentioned, reveals that the arrest of the petitioner was effected by taking into consideration the same circumstances and factors that existed at the time of issuing the said notice under Section 35(3) of the BNSS. In other words, no new grounds have been recorded justifying the arrest of the petitioner pursuant to her appearance in response to the notice under Section 35(3) of the BNSS. Therefore, I find merit in the submission of the learned counsel that the arrest has been made in violation of the aforesaid directions of the Hon'ble Supreme Court in ***Satender Kumar Antil (Supra)***. Furthermore, the petitioner has been behind bars for more than a month, and since she has already been

transferred from her earlier place of posting, and would not be in a position to tamper with the evidence.

6. Having regard to the above and taking due note of the objection raised by the learned Additional Public Prosecutor, the prayer for bail is allowed. The petitioner shall be released on bail upon furnishing a bail bond of Rs. 50,000/- with two sureties of the like amount to the satisfaction of the learned jurisdictional Magistrate. It is further provided that the petitioner shall not try to hamper the investigation or tamper with the evidence in any manner, and shall co-operate with the remaining investigation.

7. The Bail Application stands allowed accordingly.

8. Send back the Case Diary.

JUDGE

Comparing Assistant