

GAHC020002602025

2025:GAU-NL:394



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

Case No. : Tr.P.(Crl.)/1/2025

MR. ANANTA BORUAH
S/O MR. DILIP BORUAH,
R/O KUKI BASTI, SUNALI PATHAR GAON,
P/S CHUNGAJAN,
P.O CHUNGAJAN
DIST GOLAGHAT

VERSUS

THE STATE OF NAGALAND
REPRESENTED BY THE P.P, NAGALAND

Advocate for the Petitioner : MINTU SAIKIA, MANJONG KONYAK,RANJITA DUTTA

Advocate for the Respondent : LIVIKA, P.P, NAGALAND,

Date of hearing : 27.08.2025.

Date of Judgment : 27.08.2025

**BEFORE
HON'BLE MR. JUSTICE PRANJAL DAS**

JUDGMENT AND ORDER (ORAL)

1. The petitioner, Mr. Ananta Boruah, has filed the instant petition under Section 447 of the BNSS, 2023, seeking transfer of Diphupar PS case no. 41/2024 under section 316(2)/ 318(4) of the BNS, 2023, which is stated to be at the stage of investigation, under the jurisdiction of the learned Chief Judicial Magistrate, Dimapur, Nagaland to any other police station preferably under the jurisdiction of districts of Karbi Anglong, Golaghat and Jorhat in the State of Assam.

2. The case arose out of an FIR dated 21.07.2024 filed by the informant, Sri. Akaito Yeptho. The gist of the allegations is about transaction pertaining to a JCB stated to have been given by the petitioner to him and his friend for which he paid Rs. 8 lakhs. It is further alleged that subsequently, Assam police took away the JCB as it supposedly belonged to another person and since then, he is trying to get his money back, but the petitioner has been evading the same.

3. The contention of the petitioner seeking transfer is that he has received notices annexed with the petition from supposedly underground organisations making certain demands and that he has also faced threats.

4. In this regard, I have perused Annexures 3, 4 and 5. The contention of the petitioner is that the petitioner is stated to have submitted an application dated 03.04.2025 before the learned Director General of Police (DGP), Assam, learned Inspector General of Police (IGP), Assam and the learned Superintendent of Police (SP), Golaghat district of Assam seeking protection. It may be mentioned herein that the petitioner has also filed an anticipatory bail application being AB/10/2025, in which he was granted interim bail with direction to appear. But due to the non appearance, the interim protection was vacated. In this context, the petitioner submits that he could not appear because of the alleged threats and in the meantime, he filed this transfer petition, under section 447 of the BNSS, 2023. The relevant portion of the said section 447 of BNSS, 2023 may be reproduced herein below:

"447. Power of High Court to transfer cases and appeals.

(1) Whenever it is made to appear to the High Court-

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto; or

(b) that some question of law of unusual difficulty is likely to arise; or

(c) that an order under this section is required by any provision of this Sanhita, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order-

(i) that any offence be inquired into or tried by any Court not qualified under sections 197 to 205 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself."

5. Upon perusal of the said provisions, I find that the same pertains to transfer of case at the stage of inquiry or trial from one court to another in exercise of transfer jurisdiction conferred on courts. Admittedly, the present matter is at the stage of police investigation.

6. I have also heard the learned Public Prosecutor who vehemently opposes the transfer petition and contends that the same is baseless and devoid of merit. It is submitted that to address the grievance of the petitioner, the concerned IO of Nagaland police is well equipped to give him protection for the purpose of proper investigation. It is further submitted that the petitioner could have also explored the possibility of appearing through electronic mode, on one or more occasions. Hence, the learned Public Prosecutor prays for dismissing the transfer petition.

7. It also transpires that the petitioner's side had sought for some time to implead senior officials of Assam and were given 2 (two) weeks time. But the impleadment has not yet taken place. However, the learned counsel for the petitioner has agreed to the disposal of the matter at this stage.

8. In a transfer petition filed under Section 447, BNSS, 2023, power is exercised under a specific statutory provision governing transfer of criminal cases from one court to another, as provided there under. In the said section 447 of BNSS, 2023 (corresponding to Section 407 of the Code of Criminal Procedure (Cr.PC), 1973), I do not find any specific provision for the Court directing transfer of police investigation from one police station to another. The present petition is also not one invoking the inherent powers under section 528 of the BNSS, 2023.

9. Upon perusing the materials, and giving my careful consideration to the contentions and the submissions on both sides — I find force in the contention of the prosecution on behalf of the Nagaland police that the apprehension expressed by the petitioner with regard to his difficulty in cooperating with the investigation due to the alleged threats — can be addressed by giving him proper security in exercise of legitimate powers of the jurisdictional police station. The contention of the learned PP about the option of appearance through electronic mode, on one or more occasions for the purpose of such investigation can also be considered in the present times of technological advancements.

10. Therefore, the statutory provision sought to be invoked by the petitioner seeking transfer of the police investigation, is not my view the appropriate statutory provision seeking transfer of such police investigation. As already stated, the petitioner is not invoking the inherent powers under section 528 of the BNSS, 2023 as well.

Further, the contention of the prosecution on behalf of the Nagaland police regarding provision of security to the petitioner also carries weight. Lastly, I am of the considered view that due to such alleged threats from some underground organisations, it would not be justified to interfere with or disrupt territorial jurisdiction of the police investigation, especially when the concerned jurisdictional police would be fully capable to provide necessary security, if any, necessitated by the situation.

11. Consequently, not finding sufficient merit in this transfer petition, the same is dismissed and disposed of.

12. Interim order, if any, stands vacated.

JUDGE

Comparing Assistant