

GAHC020007712025

2025:GAU-NL:611



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

Case No. : Bail Appln./26/2025

SMTI. AMENLA PRADHAN,
MOTHER OF SHRI MOASUNEP JAMIR,
PERMANENT R/O CHUNGTIA YIMSEN AREA,
CHUNGTIAYIMSEN VILLAGE,
H/NO 148,
P.O MANGKOLEMBA, MOKOKCHUNG,
NAGALAND

VERSUS

THE STATE OF NAGALAND AND ANR
NAGALAND

2:SMTI. LENDIMENLA
FIR INFORMANT AND VICTIM

D/O SHRI K. IMLITENZUK

R/O AONGZA WARD

MOKOKCHUNG 798601

NAGALAND

Advocate for the Petitioner : SENTIYANGER,
MAONGKALA, YUKHAKOKLA, KEVISERIENUEO, KONLI
BUCHEM, WAPANGLEMLA, NOCKLEI M KONYAK

Advocate for the Respondent : P.P, NAGALAND,

**BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG**

ORDER

Date : 09-12-2025

Heard Mr. Sentiyanger, learned counsel for the petitioner. I have also heard Mr. Veto V. Zhimomi, learned Public Prosecutor for the State and Mr. Moa Jamir, learned counsel for the private respondent no. 2/informant.

2. This is an application filed under section 483 of the BNSS, 2023 praying for release of the alleged accused who has been arrested in connection with GR case no. 35/2024 arising out of Mokokchung Women PS case no. 02/2024 under section 4 of POCSO Act read with section 67B of IT Act.

3. The case of the petitioner is that, based on a written FIR lodged by the victim, on 05.06.2024, the above PS case was registered, and the accused was arrested on 05.06.2024 and since then, he has been languishing in judicial custody till date.

4. Earlier, 3 (three) bail applications filed before the Trial Court have been rejected on 28.11.2024, 05.04.2025 and 27.10.2025.

5. This is the 4th subsequent bail application seeking release of the accused. In this bail application, the petitioner seeks bail mainly on the ground that the mandatory requirement of "communication of the grounds of arrest to the accused" at the time of arrest was not complied with and therefore, such non-compliance amounts to

violation of Article 22 (1) and 21 of the Constitution of India and also section 47 and 48 of the BNSS.

6. The learned counsel for the petitioner submits that though arrest memo records and general reasons for arrest were issued, the prosecution records do not show that the specific grounds of arrest were furnished in writing to the accused or his family at the time of his arrest as mandatorily required.

7. In support of his contention, the learned counsel for the petitioner has relied on the following judgments of the Hon'ble Supreme Court:-

- (i) ***Vihaan Kumar Vs. State of Haryana*** reported in ***(2025) 3 Supreme 363; 2025 0 Supreme (SC) 283***, whereby the court reiterated the right under Article 22 (1) is a fundamental right and its violation invalidates the arrest and the consequential remand.
- (ii) ***Pravir Purkayastha Vs. State (NCT of Delhi)*** reported in ***2024 Supreme (SC) 463***, wherein it was held that non-compliance with the constitutional mandate to inform the arrested person of the grounds of arrest vitiates the arrest itself.

8. The learned counsel for the petitioner submits that upon submission of chargesheet, the trial of the case has already begun and all the prosecution witnesses have already been examined

including the victim and, the case is pending for examination of accused; therefore, the custodial remand of the accused is no longer required for trial purpose.

9. The learned counsel further submits that non-mentioning of the grounds of arrest while issuing the arrest memo or the notices under section 47 and 48 of the BNSS itself amounts to a violation of Article 22 (1) of the Constitution of India, hence, even without entering into the merits of the case, the present accused is entitled to bail.

10. The learned PP on the other hand submits that though there may not be any written record, the petitioner has now come to know the grounds of arrest through subsequent verbal communication and through the court proceedings. It is therefore submitted that at this stage, the petitioner cannot be allowed to take advantage of any such procedural lapses.

11. The learned counsel appearing for the respondent no. 2 adopts the submissions of the learned PP for the State.

12. I have considered the rival submissions and perused the case record.

13. The arrest memo available on record shows only general reason for arrest, but there is no material to indicate that the ground of arrest were furnished in writing to the petitioner at the time of arrest or soon thereafter.

14. The Hon'ble Supreme Court in ***Pankaj Bansal Vs Union of India*** has categorically held that "communication of the grounds of arrest must be in writing, oral or verbal communication is not sufficient." Non communication of such grounds at the earliest opportunity vitiates the arrest and subsequent supply does not cure the initial illegality.

15. A bare perusal of the case records and the memo of arrest reveals that no recording of the grounds of arrest was made or explained to the accused person.

16. The Hon'ble Supreme Court in ***Pravir Purkayastha vs. State (NCT of Delhi)*** (supra) and ***Vihaan Kumar vs. State of Haryana*** (supra), has clarified that non-compliance with the mandate of Article 22(1) renders the arrest unconstitutional and illegal. The consequences of such illegality cannot be brushed aside lightly.

17. Though the offences alleged against the accused is grave, however, in light of the above discussion, this Court is inclined to allow the bail application, not on the merits of the case, but solely on the ground of violation of the constitutional and statutory rights of the accused person at the time of his arrest.

18. Accordingly, the accused, Shri. Moasunep Jamir, is directed to be released on bail subject to the following conditions:-

- (i) The accused shall be released on furnishing a bail

bond of Rs. 20,000/- (Rupees twenty thousand) with one surety of like amount to the satisfaction of the learned Trial Court.

- (ii) The accused shall appear before the Trial Court on each date the trial is fixed and shall cooperate with the Trial.
- (iii) The accused shall not, directly or indirectly, make any inducement, threat, or promise to any person acquainted with the facts of the case.

19. The bail application stands disposed of in terms of the above.

JUDGE

Comparing Assistant