GAHC040015222026

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

Case No. : Crl.Petn./290/2026

Takai Wangsu
Son of Late Khuaden Wangsu, a permanent resident of Chanu Village, PO and PS Longding, District Longding, Arunachal Pradesh.

VERSUS

The State of AP and 5 Ors
represented through the PP of AP 2:Nahpho Wangsu
Age: 0
Occupation :
Son of Shri Nyemphu Wangsu
a permanent resident of Village Longsom
PO and PS Longding
District Longding
Arunachal Pradesh.

3:Wangjing Wangsu
Age: 0
Occupation :
Son of Shri Nyemphu Wangsu
a permanent resident of Village Longsom
PO and PS Longding
District Longding
Arunachal Pradesh.

4:Nyemphu Wangsu
Age: 0
Occupation :
Son of Shri Jinghat Wangsu
a permanent resident of Village Longsom
PO and PS Longding
District Longding
Arunachal Pradesh.

5:Nokjing Wangpan
Age: 0
Occupation :
Son of Late Manlam Wangpan
a permanent resident of Village Longsom
PO and PS Longding
District Longding
Arunachal Pradesh.

6:Manno Wangsu
Age: 0
Occupation :
Son of Shri Tahdow Wangsu
a permanent resident of Village Longsom
PO and PS Longding
District Longding
Arunachal Pradesh

Advocate for the Petitioner : Kemo Lollen, Tojum Tao,Maryum Sora,Geli Taye,D Ado,Kaling Mengu

Advocate for the Respondent : P P of AP, Taloh Tabing,Omeng Taga,Bebeng Siboh,Aso Dalbong,W Wangsu,Tabit Tapak

BEFORE
HONOURABLE MRS. JUSTICE YARENJUNGLA LONGKUMER

ORDER

11.11.2026

Heard Mr. Kemo Lollen, learned Counsel for the petitioner. Also heard Mr T. Ete, learned Additional Public Prosecutor for the State as well as Mr. T. Tapak, learned counsel for Respondent Nos. 2 to 6.

1). The present petition has been filed under Section 483 (3) of the BNSS read with Section 528 of the BNSS, praying for setting aside the common bail order dated 07.08.2026, granted to the accused/Respondent Nos. 2, 3, 4, 5 and 6, passed by the learned Sessions Judge, Khonsa

Sessions Division, Tirap District, Arunachal Pradesh, in connection with Longding P.S. Case No. 15/2026 under Section 103(1)/3(5) of BNS.

2). The principal contention advanced on behalf of the petitioner is that the learned Court below while granting the bail, failed to take into consideration the relevant materials available in the Case Diary and the Charge-sheet and the gravity and nature of the charges.

3). The learned counsel for the petitioner has submitted that, the learned Court below failed to appreciate that the Charge-sheet had already been filed on 22.07.2026 which was within the 90 days statutory period and therefore, the grant of default bail did not arise in the instant case. Further, the learned counsel also submits that the offence under Section 103(1) of the BNS is an extremely grave and heinous offence. However in spite of the fact that the bail applications were preferred by the respondent accused under Section 480 of the BNSS corresponding to Section 437 of the Cr.P.C., the Court did not consider the conditions laid down under Section 480 of the BNSS while considering the bail applications.

4). It is also the submission of the learned counsel for the petitioner that the release of the accused/respondents on the ground of a non-existent default ground has caused severe prejudice to the prosecution. Moreover, as the accused/respondent No. 3 is a police personnel serving under the Arunachal Pradesh Police.

5). It is submitted by the learned counsel for the petitioner that the petitioner is the biological elder brother of the deceased victim in the instant case and he is the informant who had lodged the FIR dated

26.04.2026 in connection with the present case.

6). It is further submitted by the learned counsel for the petitioner that, the impugned order dated 07.08.2026 suffers from total non application of mind and does not disclose any consideration of the relevant parameters governing the exercise of jurisdiction for grant of bail in a heinous offences. Accordingly, it is prayed that the impugned order dated 07.08.2026 is unsustainable in law and is liable to be set aside.

7). Learned counsel for the petitioner relies on the following judgments in support of his submission:

i) **Kalyan Chandra Sarkar Vs. Rajesh Ranjan Alias Pappu Yadav and Another reported in 2004 7 SCC 528;**

ii) **Pralad Singh Bhati Vs. NCT Delhi and Another reported in 2001 4 SCC 280**

8). The learned Addl. Public prosecutor Mr. T. Ete, appearing for the State respondent has also adopted the submissions made by the learned counsel for the petitioner and additionally submits that the impugned bail order dated 07.08.2026 is absolutely perverse and has been passed without considering any of the settled principles of law regarding grant of bail.

9). The learned Addl. Public Prosecutor, submits that the Supreme Court has distinguished between cancellation of bail on account of supervening circumstances and setting aside an order granting bail on the ground that the order suffers from illegality or perversity. It has been held that in a case where the Court granting bail has failed to consider relevant factors, the superior Court would be justified in setting aside such an order.

10). Learned Addl. Public Prosecutor, submits that the impugned order dated 07.08.2026 is a cryptic order inasmuch as it is reflected that the bail application is filed under Section 480 BNSS whereas on the other hand, the Court has stated that the applicants have filed for default bail. The learned Court below has wrongly placed reliance on the case of *P. Chidambaram Vs. CBI and Sanjay Chandra Vs. CBI* inasmuch at the cited cases, relate to economic offences under the Prevention of Corruption Act.

11). Learned Addl. Public Prosecutor by referring to the case of ***Virupakshappa Gouda and Another Vs. State of Karnataka and Another reported in 2017 5 SCC 406*****,** submitted that the Hon'ble Supreme Court in the said case held that:

> "*The principle laid down in the case of Sanjay Chandra Vs. CBI cannot be made applicable in each and every case for grant of bail. In the said case, the appellant-accused was facing trial for the offences under Sections 120-B, 420, 468, 471 and 109 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. Thus, the factual matrix was quite different. That apart, it depends upon the nature of the crime and the manner in which it is committed. A bail application is not to be entertained on the basis of certain observations made in a different context. There has to be application of mind and appreciation of the factual score and understanding of the pronouncements in the field".*

12). The learned Addl. Public Prosecutor, has also relied on the case of ***Rajesh Ranjan Yadav alias Pappu Yadav Vs. CBI reported in 2007 1 SCC 70,*** wherein the Supreme Court stated as under:

> "*11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case*

need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh and Puran v. Rambilas)

19. This Court also in specific terms held that: (SCC pp. 536–37, para 14)

"[T]he condition laid down under Section 437(1)(i) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to be enlarged on bail, nor the fact that the trial is not likely to be concluded, in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."

13). Relying on the above cited cases, the learned Addl. Public Prosecutor, submits that in an application under Section 480 BNSS, the Court has to consider the conditions laid down therein and has to examine whether there is reasonable ground for believing that the accused is guilty of an offence punishable with death or imprisonment for life. In the case of *Rajesh Ranjan Yadav (Supra),* it was held that the Court has to also

consider the nature of accusation and the severity of the punishment in case of conviction and the nature of the supporting evidence and, moreover, the apprehension of tampering with the witnesses is also a factor to be considered before granting bail. Further, the Supreme Court also held that the conditions laid down under Section 437 of the Cr.P.C. are *sine qua non* for granting bail even under Section 439 of the Cr.P.C. and when the Court has taken into consideration the period of incarceration already undergone by the accused and the likelihood of trial not concluding in the near future as grounds to enlarge the accused on bail, the mere fact that the accused had undergone a certain period of incarceration by itself would not entitle the accused to be enlarged on bail.

14). Learned Addl. Public Prosecutor, therefore, submits that in the present case the learned Court below has allowed the bail applications on the ground that the Charge-sheet is filed and that there is no allegation of tampering with the evidence and that the trial of the case will take a considerable period of time. The learned Court could not have arrived at such a finding as the accused respondents had only been in custody for about 90 days and the trial had had not even commenced and it was not possible for the Court to come to a conclusion that the trial will take a long time.

15). Another pertinent factor which the learned Addl. Public Prosecutor has pointed out is that, in the present case, there are 5 accused persons and their bail applications were disposed of by the common impugned order dated 07.08.2026. However, the learned Court below has not given any finding in respect of each accused person and has not stated the reasons and the grounds for granting bail with regard to each accused

person. Therefore, the order is a blanket bail order issued for all the accused respondents in spite of the fact that the evidence against each of the accused may be distinct and different and separate.

16). Learned Addl. Public Prosecutor, therefore, submits that the impugned order granting bail cannot be sustained and is liable to be set aside.

17). *Per contra*, learned counsel Mr. T. Tapak, appearing for all the accused persons/respondents 2 to 6, submits that the accused persons were enlarged on bail by a competent Court after due consideration of the materials placed before the Court and this Court in a petition under 528 of the BNSS cannot interfere with the exercise of discretion by the Court below. The learned counsel submits that no sufficient ground has been made out for interference with the impugned order. Learned counsel also submits that the learned Court below has taken the entire facts and circumstances into consideration before issuing the impugned order dated 07.08.2026, in exercise of its discretionary power.

18). Learned counsel for the accused/respondents also submits that the charges have been framed against the accused persons and the trial has commenced. And till date, there is no allegation against any of the accused persons regarding violation of any of the bail conditions. The accused persons have been cooperating with the trial and they will continue to do so.

19). Learned counsel has also relied upon the Judgment of the Supreme Court in the case of ***Mahboob Dawood Shaikh Vs. State of Maharashtra reported in 2004 2 SCC 362*** in support of his

arguments.

20). In view of his submissions, the learned counsel submits that the petitioner has not been able to make out a case for the interference of this Court and the petition deserves to be dismissed.

21). I have considered the rival submissions made by the parties and perused the materials available on record.

22). At the outset, it is observed that the jurisdiction of this Court to interfere with an order granting bail is not to be exercised merely because another view of the matter is possible. However, when the order granting bail is found to be perverse, arbitrary, suffers from non-application of mind or ignores relevant considerations having a bearing on the question of grant of bail, interference would be justified.

23). In the case of ***Mahipal Vs. Rajesh Kumar reported in 2020 2 SCC 118,*** the Supreme Court laid down important principles governing the cancellation of bail and the exercise of appellate jurisdiction against an order granting bail. Importantly, the Supreme Court distinguished between:

i) Cancellation of bail when there is misuse of liberty, interference with witnesses or likelihood of absconding subsequent to the grant of bail;

ii) Setting aside an order granting bail in view of the illegality of the bail order itself and when the bail order is found to be perverse, illegal or passed in disregard of relevant parameters concerning bail.

24). In the present case on examination of the impugned order dated 07.08.2026, this Court finds that the learned Court below has failed to adequately consider whether a prima facie case existed against the

accused persons, the nature and gravity of the offence, the severity of the punishment upon conviction, possibility of influencing witnesses or likelihood of repetition of the offence.

25). The learned Court below is also not clear about the provision under which the application has been taken up. On one hand, the bail application is stated to be under section 480 BNSS. However, on the other hand, the order also reflects that the application is a default bail application. Assuming that it was a default bail application under Section 187 BNSS, there was no requirement of appreciating the bail application against the parameters of granting bail. But the fact that the Charge-sheet was already filed within the mandatory period would negate the entertainment of a default bail application. Alternatively, if the bail application is taken to be one filed under Section 480 BNSS, the statutory conditions contained in Section 480 of the BNSS has to be considered by the trial Court. Evidently, the application was not one under Section 187 BNSS as Charge-sheet had already been filed

26). The bail order must disclose the relevant considerations which weighed with the Court. Merely stating that the Court has perused the records and considered the facts and circumstances is insufficient. Where an order granting bail does not disclose the reasons for the decision, it raises a presumption of non-application of mind. This Court has also observed that the learned Court below has not taken into consideration the gravity of the offense, the nature of evidence or any other relevant factors. The Court also could not have known that the trial of the case will take a considerable period of time as the Charge-sheet had only been filed at the time of considering the bail application and the trial had not yet

commenced.

27). As held in the case of *Virupakshappa (Supra) ,* the principles laid down in the case of *P. Chidambaram and Sanjay Chandra* could not have been made applicable in this case, as the factual matrix was not the same. The two cases relied upon by the Court below pertains to offences under the Prevention of Corruption Act whereas in the instant case the accused persons had been charged under Section 103(1) of the BNS with Section 3(5) of the BNS.

28). The impugned order dated 07.08.2026 therefore does not reflect a proper consideration of the relevant materials and the settled parameters governing the grant of bail. The omission is not merely an error in appreciation of the materials but goes to the root of the exercise of judicial discretion.

29). In the circumstances, this Court is of the considered view that the impugned order dated 07.08.2026 cannot be sustained and is liable to be set aside. It is however clarified that this Court has not examined the merits of the charges against the accused for the purpose of determining whether the accused persons are entitled to bail. The question of grant of bail is required to be considered afresh by the learned Court below upon an independent assessment of the materials and the relevant legal principles.

30). Accordingly, the impugned order dated 07.08.2026 passed by the learned Sessions Court, Khonsa Sessions Division, Tirap District, Arunachal Pradesh in bail application Nos. 65, 66, 67, 68 and 69 of 2026 is hereby set aside.

31). The matter is remitted to the learned Court below for a fresh consideration of the bail application which will be filed by the accused respondents within a period of 7 days from today. The learned Court below shall consider the fresh bail application after affording an opportunity of hearing to the accused, the prosecution and the present petitioner uninfluenced by any observations made in this order and pass a reasoned order on its own merits.

32). Having regard to the fact that the accused persons have been enlarged on bail, the learned Court below shall dispose of the fresh bail application so filed by the accused persons within a period of 3 days from the day it is filed.

33). In the event the fresh bail application is not filed within a period of 7 days from today, the accused/respondents shall surrender before the Sessions Court and shall be taken into custody and await the outcome of the fresh order to be passed by the learned Session Judge.

34). It is further clarified that, the observations made in this order are confined to the legality of the impugned bail order dated 07.08.2026 and shall not be construed as an expression of opinion on the guilt or innocence of the accused persons or on the ultimate merits of the bail application.

35). The Criminal Petition stands allowed to the extent indicated above.

JUDGE

CHECKED & VERIFIED

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