GAHC010002002026

2026:GAU-AS:17074

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

Case No. : Bail Appln./28/2026

MAINUL ISLAM ALIAS MOINUL UDDIN
SON OF LT SIRAJ ALI, RESIDENT OF VILLAGE- BORHOLA, POLICE STATION- HOJAI, DISTRICT HOJAI, ASSAM-782435

VERSUS

THE STATE OF ASSAM AND ANR
THROUGH THE PUBLIC PROSECUTOR, ASSAM.

2:JASMINE BEGUM
WIFE OF MAINUL ISLAM
RESIDENT OF VILLAGE- AHMED NAGAR
P.S HOJAI
DISTRICT HOJAI
ASSAM - 782435

Advocate for the Petitioner : MR A ATREYA, MR. J KONWAR,MS. C KALITA
Advocate for the Respondent : PP, ASSAM, MR. SURAJIT DAS, (AMICUS CURIAE R2)

BEFORE
HONOURABLE MR. JUSTICE PRANJAL DAS

ORDER

19.11.2026

Heard Mr. A. Atreya, learned counsel appearing for the accused petitioner. Also heard Mr. B. Sharma, learned Addl. P.P., Assam appearing for the State respondent and Mr. S. Das, learned Amicus Curiae appearing for respondent

No.2.

2. This petition under Section 483 of the BNSS, 2023 has been filed by the accused-petitioner, namely, **Mainul Islam @ Moinul Uddin,** praying for grant of bail in connection with **Special POCSO Case No. 241(H)/2024 arising out of Hojai P.S. Case No.229/2024 under Section 65(1) of BNS, 2023 read with Section 4(2) of the Protection of Children from Sexual Offences Act.**

3. The gist of the allegations is that the petitioner committed sexual abuse/assault upon the victim girl stated to be his own daughter.

4. The investigation resulted in a charge-sheet followed by framing of charge and commencement of trial. In the charge-sheet, 13 witnesses are listed and so far, 5 witnesses are stated to have been completed, including the victim.

5. The scanned record is available.

6. The learned Additional Public Prosecutor has drawn attention to the testimony of the victim's brother and submitted that he has implicated the petitioner.

7. The petitioner side has filed an additional affidavit annexing certified copies of some depositions including that of the victim and I have perused the same.

8. The learned Amicus, Mr. Das has also submitted that the allegations are indeed very serious and there are implications against the petitioner.

9. Learned counsel for the petitioner further submits that the notice under Section 48 BNSS given at the time of arrest of the petitioner on 7/8/2024 is deficient. The learned counsel also seeks bail for the accused on the ground of

length of detention since August, 2024.

10. It is submitted that the petitioner, if granted bail, will abide by any conditions, including any conditions to maintain separate premises.

11. With regard to the contention of the learned counsel for the petitioner about infirmity in the notice under Section 48 BNSS, I have perused the annexed copy of the notice purportedly under Section 48 BNSS. Copies of the notices under Section 47/48 BNSS are also available in the scanned TCR.

The notice under Section 47 BNSS has reasonable details and as rightly held by the learned Trial Court, it passes the test of the mandate of law. However, the notice under Section 48 BNSS which is available in the scanned TCR is found to be bereft of any grounds on which the accused person has been arrested. The said notice has been issued in the name of Maleka Khatun. It merely states that the person Mainul Islam is being arrested in connection with the case and penal section of law referred below. The date, place and time of arrest are mentioned. For ready reference the said notice under Section 48 BNSS, available in the scanned TCR may be reproduced herein below:-

> "NOTICE OF INFORMATION U/S 48 BNSS
>
> (Information to arrested person on grounds of arrest and right to ball)
>
> To,
>
> (Information to friends/relatives/disclosed or nominated persons of arrestee)
>
> Name : Maleka Khatun (age 33 years)
>
> S/O : Lt. Siraj Ali
>
> Village : Borhola
>
> Post office: Jugijan

Police Station:Hojai Out Post (if any):

Special Judge, POCSO

Hojal, Assa,

Respected Sir/Madam,

You are hereby informed that the following person is arrested in connection with case & penal section of law referred below:

Name and address of the arrested person	Case No & Penal Sections of Law, OD dereference and Circumstance.
Mainul Islam (age 33 years) S/O: Lt. Siraj Ali Vill: Borhola PS & Dist: Hojai (Assam)	Hojai PS C/No.229/24, U/S-65(1) BNS, R/W-4(2) POCSO Act.

Date and time of arrest On 07/08/2024 at 01:00 PM

Place of arrest Hojai PS

Designation SI (P) of Police

PS/OP Jugijan PP, Hojai PS

Date and Time : 07.08.2024 at 1.00 pm"

12. The law has crystallized by now that in the event of non-compliance with the notice under Section 48 BNSS, the arrest of the person would be vitiated, being violative of his constitutional provisions under Article 22 of the Constitution of India and therefore, his further undertrial detention would become untenable, thereby meaning that he is required to be granted bail. Such right to be granted bail would be irrespective of the merit of the case or the nature of the allegations and would also prevail over statutory restrictions if any,

on granting of bail. (Reference to *Vihaan Kumar vs. State of Haryana and Another,* (2025) SCC OnLine SC 269.

13. In the instant case the alleged offences are of heinous nature pertaining to the petitioner committing rape upon his own daughter. The trial is in progress and fortunately, the victim has been examined already. In view of the aforesaid deficiency in the notice under Section 48 BNSS, the same would not pass the test of the constitutional mandate under Article 22 of the Constitution of India, in the context of the law laid down by the Hon'ble Supreme Court in inter alia Vihaan Kumar (supra). Therefore, irrespective of the heinous nature of the alleged offences, there is no option but to grant bail to the accused petitioner at this stage.

14. Accordingly, the accused petitioner named above is hereby allowed to go on bail of **Rs. 50,000/-** with two sureties of the like amount to the satisfaction of the learned Trial Court. The following bail conditions are imposed:-

(i) He shall not abscond;

(ii) He shall not hamper or tamper with evidence;

(iii) He shall be available during the remaining trial;

(iv) He shall not try to influence or threaten or harass any witnesses;

(v) He shall not in any manner intimidate or harass or threaten or harm the victim girl;

(vi) He shall not commit any illegal activities or offences;

(vii) He shall completely stay away from the victim girl and he shall have to maintain separate residence or premises from the victim girl who happens to be his own daughter.

15. Violation of the bail conditions would lead to cancellation of the bail.

16. A copy of this order shall be sent to the concerned Police Station and the IO in turn will bring the bail conditions to the notice of the victim's family, especially the victim and inform them that in case of any violation of bail conditions, the matter should be brought to the notice of the concerned Police Station, for the needful.

17. The instant bail petition stands allowed and disposed of on the aforesaid terms.

JUDGE

Comparing Assistant