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

Case No. : Bail Appln./1727/2026

SRI KANGRESH CHOUDHURY
S/O LATE RAMCHANDRA YADAV
R/O LACHITNAGAR BYE LANE NO. 3, OPPOSITE HOUSE NO. 10, P.S. PALTAN BAZAR, DISTRICT KAMRUP METRO ASSAM, PHONE NO. 9102124548

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PP, ASSAM

2:SRI AMITABH GOGOI
S/O SRI JAGANNATH GOGOI
R/O HOUSE NO. 29 KEKURA NAGARBEHIND MUKESH HYUNDAI GANESHGURI
P.S. DISPUR
DISTRICT KAMRUP (METRO)
ASSAM
PHONE NO. 600102434

Advocate for the Petitioner : MR. B D KONWAR SR. ADV., MS S JAIN,MR P DOLEY,MS M ZOMUANPUII,MR J SINGH,MR H AGARWAL

Advocate for the Respondent : PP, ASSAM, MS T PARASHAR, Amicus Curiae, R2

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

05.10.2026

1. Heard Mr. B. D. Konwar, the learned senior counsel assisted by Ms. S. Jain, the learned counsel for the petitioner. Also heard Mr. R. R. Kaushik, the learned Additional Public Prosecutor for the State as well as Ms. T. Parashar, the learned Amicus Curiae to defend the cause of the respondent No. 2 in this case.

2. This application under Section 483 of the BNSS, 2023 has been filed by the petitioner, namely, Sri Kangresh Choudhury, who is detained behind the bars since 10.01.2025 (for last 1 year 8 months and 19 days) in connection with Sessions (Spl.) Case No. 41/2025 arising out of All Women Police Station Case No. 08/2025 under Section 74 of the BNSS, 2023 read with Section 10 of POCSO Act, 2012.

3. The gist of accusation in this case is that on 13.01.2025, the father of the victim girl lodged an FIR before the Officer-in-Charge of All Women Police Station, Panbazar, Guwahati *inter-alia* alleging that the petitioner, who is the tuition teacher of the victim girl, used to make uncomfortable advances towards her and had fondled her breast on 12.11.2025 at 12:40 PM.

4. On receipt of the said FIR, All Women P. S. Case No. 08/2025 was registered under Section 74 of the BNSS, 2023 read with Section 10 of POCSO Act, 2012 and the investigation was initiated.

5. Ultimately, on completion of the investigation, charge sheet was laid against the present petitioner under Section 74 of the BNSS, 2023 read with Section 10 of the POCSO Act, 2012.

6. Mr. B. D. Konwar, the learned senior counsel for the petitioner submits that the petitioner has been falsely implicated in this case by the victim girl on her failure to pay him the tuition fees, which was given to her by her mother. He further submits that the materials on record indicate that the charges, even if the accusation is assumed to be true, ought to have been framed under Section 8 of the POCSO Act, 2012 and not under Section 10 of the POCSO Act, 2012.

7. He further submits that even taking the charge under Section 10 of the POCSO Act, 2012, the maximum punishment which may be imposed on the petitioner in the event of his conviction in the present case would be seven years, and he has already undergone imprisonment for more than one year eight months. He submits that all the prosecution witnesses have been examined and cross-examined and now the trial is pending at the stage of examination of the accused person and for defense evidence if there is any requirement for the same. He submits that in order to raise his defence properly in the pending trial, the petitioner is required to be released on bail, otherwise there are impediments in raising proper defence in the pending trial.

8. He also submits that no purpose would be served in keeping the petitioner behind the bars during the remaining portion of the trial, as he is ready to fully cooperate in the remaining trial pending before the Trial Court.

9. He also submits that in the instant case, there has been violation of the constitutional mandate under Article 22 of the Constitution of India in as much as in the notice which was served on the petitioner under Section 47 of the BNSS, 2023 no grounds of arrest were stated therein. He further submits that even the notice under Section 48 of the BNSS, 2023, which was issued in this case does not contain any grounds of arrest. Even the accusation against the petitioner was not specifically mentioned in those notices.

10. He also submits that there are many contradictions in the testimony of the victim girl and other witnesses and in order to prepare his defense, his release on bail is necessary.

11. On the other hand, Mr. R. R. Kaushik, the learned Additional Public Prosecutor, has submitted that the trial is pending at its fag end and releasing the petitioner at this stage may not be appropriate as there is a flight risk, as the petitioner may evade the course of justice, frustrating the entire trial. He further submits that since the offense involved in this case is of serious nature under Section 10 of the POCSO Act, 2012 hence, this Court should be reluctant to grant bail in such cases. In support of his submission, he has cited a ruling of the Apex Court in the case of ***"X Vs. State of Rajasthan"*** [Order dated 27.11.2024, passed in SLP (Crl.) No. 13378/2024].

12. He further submits that since in his earlier approaches before the Trial Court as well as before this Court, the petitioner has not agitated the points regarding the violation of mandate of Section 47 and 48 of the BNSS, 2023, and his bail applications were dismissed on merits, it is not open to him to go back again and raise the plea of violation of Article 22 of the Constitution of India in not furnishing

the grounds of arrest. He has cited a ruling of the Apex Court in the case of ***"State of Meghalaya Vs. Sonam Raghuvanshi @ Bitti @ Bittu"*** [Order dated 23.07.2026 in SLP (Crl.) No. 11944/2026].

13. He also submits that at this stage, this Court, while taking up the bail application, should not go into the merits of the case as any observation made by this Court would have an impact on the pending trial against the petitioner.

14. Ms. T. Parashar, the learned Amicus Curiae appearing for respondent No. 2 has also adopted the submissions made by the learned Additional Public Prosecutor while opposing the grant of bail. She submits that the earlier application which was filed by the petitioner before this Court was dismissed for non-prosecution. She also submits that releasing the petitioner at this stage would entail a flight risk and may frustrate the pending trial before the Trial Court.

15. I have considered the submissions made by learned counsel for both sides and have gone through the materials available on record, including the scanned copy of the Trial Court records wherein the testimony of the witnesses are also available.

16. On perusal of the records, it appears that the earlier bail application filed by the petitioner before this Court was dismissed for non-prosecution, whereas the bail application which was filed by the petitioner before the Trial Court was dismissed mainly on the ground that the offense involved in this case is of serious nature and one of the prosecution witnesses, i.e., PW-4, was yet to be examined at that point of time.

17. On perusal of the copies of notices under Section 47 and Section 48 of the BNSS, 2023 which were issued in this case by the arresting

authority, there remains no doubt that the mandate of Article 22 of the Constitution of India was not followed by the arresting authority while issuing such notices, as said notices are bereft of any grounds of arrest for which the petitioner was arrested.

18. Even if the said violation of the constitutional mandate is ignored at this stage, this Court is of the considered opinion that, since all the prosecution witnesses have been examined including the victim girl, and there is no material on record that there was any attempt by the petitioner to threaten the victim girl or any of the witnesses, his continued detention for the reason that he may threaten the witnesses is not be justified.

19. It appears from the record that the petitioner is a permanent resident of the State of Bihar, however, he was staying at Rajgarh, Bye-lane No. 3 under Paltanbazar Police Station for several years, and there is nothing on record to indicate that he has attempted to evade the course of justice. The apprehension shown by the learned Additional Public Prosecutor as well as learned Amicus Curiae regarding the flight risk can be addressed by imposing appropriate conditions while granting the bail.

20. The plea of the learned Additional Public Prosecutor that in all serious offences the Court should be loath in entertaining bail application may be applicable in offences which were enumerated by the Apex Court while making such observation, i.e. rape, murder, and dacoity. However, merely because of the fact that an offence under Section 10 of the POCSO Act, 2012 has been registered against a person would not mean that he would be denied bail under all circumstances. Apart from the gravity of offence, some other

apprehensions have to be there like evading the course of justice, attempting to threatening of witnesses by the accused, etc., which may jeopardize the smooth progress of the trial before the Trial Court. However, in the instant case, there are no material on record to arrive at an adverse finding against the petitioner at this stage. As such, if the petitioner cooperates in the trial, he has a right to prepare his defence by remaining as a free person.

21. In view of the discussions made and reasons stated in the foregoing paragraphs, the petitioner Sri Kangresh Choudhury is allowed to go on bail of Rs. 50,000/- (Rupees Fifty Thousand) only with two sureties of like amount, subject to the satisfaction of the Trial Court with the following conditions.

i. That the petitioner shall cooperate in the trial of Sessions (Spl.) Case No. 41/2025, which is pending in the Court of the learned Special Judge (POCSO), Kamrup (M), Guwahati;

ii. That the petitioner shall appear before the Trial Court as and when so required by the Trial Court;

iii. That the petitioner shall not directly or indirectly make any inducement, threat, or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts before the Trial Court in the trial pending against the present petitioner;

iv. That the petitioner shall provide his contact details including photocopies of his Aadhar Card or Driving License or PAN card, mobile number, and other contact details before the Trial Court;

v. That the petitioner shall not leave the jurisdiction of the Trial Court without prior permission of the Trial Court and when such leave is granted by the Trial Court, the petitioner shall submit his leave address and contact details during such leave before the Trial Court; and

vi. That the petitioner shall not commit any offence while on bail.

22. With the above observation, this bail application is disposed of.

JUDGE

Comparing Assistant