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

Case No. : I.A.(Crl.)/886/2026
in
Crl.A./303/2026

KARAN ORANG
SON OF BIRJU ORANG
RESIDENT OF VILLAGE NO.2
LOKAMPUR
P.S MAZBAT
DISTRICT UDALGURI
BTR ASSAM - 784507.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM.

Advocate for : MR A ATREYA
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE

HON'BLE MRS. JUSTICE MITALI THAKURIA

ORDER

07-10-2026

Heard Mr. J. Konwar, learned counsel appearing on behalf of Mr. A. Atreya, learned counsel for the applicant/appellant and Ms. S. H. Borah, learned Additional Public Prosecutor, Assam.

2. This is an application filed under Section 430(2) of the BNSS, 2023 for suspension of sentence and to release the accused applicant/appellant on bail during the pendency of the connected appeal.

3. It is submitted by Mr. Konwar, learned counsel that vide the impugned judgment dated 27.02.2026 and order dated 09.03.2026, passed by the learned Sessions Judge, Udalguri, Assam in Sessions (T-1) Case No. 26/2024 had convicted the accused applicant/appellant under Section 104 BNS and 118 BNS and thereby sentenced him to undergo R. I. for 5 years for offence under Section 104 BNS along with a fine of Rs.20,000/- with default stipulation and further sentenced him to undergo R. I. for 3 years for the offence under Section 118 BNS.

4. He further submitted that from the record it reveals that the date of incident was on 12.08.2024 and the death of the deceased was on 14.08.2024 and the FIR was lodged on 15.08.2024.

5. Mr. Konwar, learned counsel basically emphasized on the evidence of the PW-2, wherefrom it reveals that after the incident, the deceased was taken to Mahaliapara PHC and after preliminary treatment, he was returned to his home and after two days of the incident, he died and then only, on 15.08.2024, the FIR was lodged.

6. He further submitted that though PW-6, the Doctor who conducted the post mortem was examined, but the Doctor, who initially treated the victim/deceased was not examined by the prosecution and there is no injury report submitted issued by the Doctor from the said PHC. Thus, it cannot be held that the victim succumbed to his injuries and though the post mortem report says that the victim/deceased died due to the head injury and in that context, he relied on a decision of a Division Bench of this Court passed in Crl. A. No. 73/2022 dated 26.02.2026 [Musstt. Mirija Begum Vs. State of Assam An Anr.], wherein in para 22 of the said judgment, this Court relied on another decision of a Division Bench of this Court in the case of **Md. Abdul Azit Vs. State of Assam** (Crl. Appea No. 222/2018) has held that prosecution did not examine the surgeon who undertook the surgical operation upon the deceased, nor the Doctor was examined who treated the deceased during the time the deceased was in the hospital and accordingly, held that it is difficult to arrive at an unhesitant view that the genesis of the death of the deceased was the assault allegedly inflicted on him on the date of the alleged incident.

7. Here in the instant case also, it is seen that the victim was released from the PHC after giving him preliminary treatment and the victim died after two days of the incident in his house. But, the prosecution failed to examine the Doctor, who gave the preliminary treatment to the victim/deceased at the PHC.

8. Mr. Konwar further submitted that there is no eye witnesses to the prosecution case and as per the evidence of the PW-2, the accused himself informed PW-2 that he assaulted the deceased. Mr. Konwar further relying on a decision of the Apex Court in the case of **Bhagwan Rama Shinde Gosai and Ors. Vs. State of Gujarat** reported in **(1999) 4 SCC 421** and emphasized on para 3 of the said judgment, wherein the Apex Court had expressed the view

that the suspension of sentence can be considered wherein the sentence is for a fixed period and when the probability of disposal of the appeal within a limited period is less. Para 3 of the said judgment read as under:

> "*3. When a convicted person is sentenced to fixed period of sentence and when he files appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when motion for expeditious hearing the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter suspending the sentence, so as to make the appeal right meaningful and effective. Of course appellate courts can impose similar conditions when bail is granted.*"

9. He further submitted that the accused applicant/appellant is in custody for last 1 year 4 months and considering his period of detention also, he may be released on bail. Further, he will furnish sufficient surety, if he is released on bail by suspending the sentence imposed on him.

10. Ms. Borah, learned APP raised objection and submitted that the prosecution could establish the case against the accused applicant/appellant beyond all reasonable doubt. She further submitted that admittedly there is no eye witness to the prosecution case, but PW-4 who is one of the vital witness of the prosecution had deposed that some small children saw the accused applicant/appellant while assaulting the victim by a bamboo stick, which has also been seized by police during the investigation.

11. She further submitted that the medical evidence or the evidence of the

Doctor (PW-6) also supports the ocular evidence of the prosecution wherein he found that the deceased died due to head injury sustained by him and the death was opined as homicidal in nature. PW-2, the informant/wife of the deceased also narrated the story that it is the accused appellant, who informed her that he assaulted the victim. She immediately came to the place of occurrence and found her husband lying on the floor and thereafter with the help of people he was taken to Mahaliapara PHC. Thus, though there is no eye witness to the prosecution case, but all the circumstances are in favour of the prosecution, which is also sufficient to convict the accused appellant.

12. She further submitted that initially the case was registered under Section 103 (1) BNS, but subsequently, the accused was convicted under Section 104 BNS. Accordingly, she raised objection and submitted that prima facie a case is found against the accused appellant and hence, the bail prayer may not be considered at this stage.

13. It is seen that though initially the case was registered under Section 103(1) BNS, but subsequently, the accused applicant/appellant was convicted under Section 104 BNS along with Section 118 of BNS, considering it to be a case of culpable homicide, not amounting to murder.

14. Further, Ms. Borah, learned APP also raised the point that though the conviction was under Section 104 BNS, but it ought to have been case of Section 105 BNS as Section 104 BNS speaks about the punishment for murder of a life convict. But those are the things which can be decided at the time of final hearing the connected appeal. But prima facie it reveals that the accused appellant ought to have been convicted under Section 105 BNS, as he is not a life convict as per Section 104 BNS.

15. Heard the submissions made by the learned counsel for the parties and I have also perused the TCR as well as the evidence.

16. It is seen that the prosecution case is basically based on circumstantial evidence as there is no eye witness. However, as stated by the learned APP that PW-4 is a vital witness as per whom, he came to know about the incident from some small children and also saw the accused appellant while fleeing from the place of occurrence.

17. But at the same time, it is also an admitted fact that the victim/deceased was initially taken to Mahaliapara PHC and after providing treatment there, he returned back to him home and after two days of the incident only, he died in his house and then, the FIR was lodged and the post mortem was also done by the PW-6. Further, the Doctor who provided preliminary treatment to the deceased was never examined by the prosecution, nor any injury report is produced by the prosecution at the time trial or during the investigation. But admittedly, this plea was not taken by the appellant while cross examining the PW-6 or at the time of argument before the learned Trial Court. But admittedly the Doctor who provided treatment to the victim/deceased was never examined by the prosecution and the Coordinate Bench of this Court also considered this aspect while dealing with an appeal that the necessity of examination of the Doctor, who provides the preliminary treatment to a victim/deceased.

18. Apart from that it is seen that the accused appellant is in custody for last 1 year 4 months and the term of sentence imposed on him is of 5 years for Section 104 BNS. More so, admittedly the hearing of the appeal is also delayed, though the accused appellant is in custody for 1 year 4 months in a case wherein, the fixed period of punishment was of 5 years is imposed on the appellant.

19. Considering all these aspects of the case, the view expressed by the Coordinate Bench of this Court vis-à-vis the view expressed by the Hon'ble Apex Court, this Court is of the opinion that the accused applicant/appellant may be released on bail at this stage considering his previous conduct by suspending the sentence imposed upon him.

20. Accordingly, impugned judgment dated 27.02.2026 and order dated 09.03.2026, passed by the learned Sessions Judge, Udalguri, Assam in Sessions (T-1) Case No. 26/2024 convicting the accused applicant/appellant under Section 104 BNS and 118 BNS and sentencing him to undergo R. I. for 5 years for offence under Section 104 BNS along with a fine of Rs.20,000/- with default stipulation and further sentencing him to undergo R. I. for 3 years for the offence under Section 118 BNS is hereby suspended/stayed till disposal of the appeal and the applicant/appellant, namely, **Karan Orang** is allowed to go on bail on furnishing a bail bond of Rs. 50,000/- (Rupees Fifty Thousand) only with one surety of the like amount to the satisfaction of the learned Sessions Judge, Udalguri, Assam.

21. With the above observation and direction, this interlocutory application stands allowed and disposed of.

JUDGE

Comparing Assistant