GAHC010206962026

2026:GAU-AS:16450

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

Case No. : Bail Appln./2925/2026

RAFIQUL ISLAM ALIAS ROFIQUL ISLAM
S/O LATE SUJAB ALI SARKAR, R/O SUBHASH NAGAR, WARD NO. 12, PS AND DIST DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REPRESENTED BY THE LEARNED PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. SURAJIT DAS, MD A RAHMAN,A MISHRA,MR A W AMAN,MR SARFRAZ NAWAZ

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ANJAN MONI KALITA

ORDER

Date : 10.11.2026

Heard Mr. S. Das, learned counsel for the accused applicant. Also heard Mr. K.K. Parasar, learned Additional Public Prosecutor appearing for the State.

2. This is an application under Section 483 of BNSS 2023 praying for granting bail to the accused applicant namely, Rafiqul Islam @ Rofiqul Islam in connection with Dhubri

P. S. Case No. 336/2026, in (GR Case No. 1023/2026) under Sections 61(2)/123/3(5) of BNS, 2023 read with Sections 22(c)/25/29 of the NDPS Act, 1985.

3. The gist of the fact is that an FIR was lodged by the informant namely Madhab Deuri, SI(P) on 23.08.2026 before the Officer-In-Charge of Dhurbi Police Station alleging that on receipt of reliable information at around 12.05 p.m., to the effect that a person was transporting certain narcotic substances by a green coloured Hero Pleasure (Scooty) bearing registration No. AS-17M-0427, the police set up a naka checking at New Ghat Madrasa More. On seeing the police party, the rider of the scooty attempted to flee and in course of his attempt to flee, certain bottles containing alleged narcotic substance had fallen down.

4. It is alleged that police party intercepted him and detained the rider who disclosed himself to be Rafiqul Islam.

5. On receipt of the FIR, Police registered Dhubri P. S. Case No. 336/2026 under the aforementioned Sections.

6. The learned counsel appearing for the accused applicant submits that from the materials available it is seen that the accused applicant was detained at around 1:30 pm on 23.08.2026. However, he was produced before the CJM, Dhubri only at 4:15 pm. He submits that the accused applicant was produced before the concerned CJM beyond the 24 hours which is in violation of mandates under Article 22(2) of the Constitution of India as well as Section 58 of BNS, 2023. He submits that it is a settled law that a person who is arrested under an offence is mandated to be produced before the nearest Magistrate within 24 hours and this aspect has been time and again reiterated by the Hon'ble Supreme Court. In this connection, he has referred to the case of ***Sujit Das and Others –vs- Union of India*** reported in ***2026 SCC Online SC 2358***.

7. In view of the aforesaid violation, he submits that liberty of the accused applicant has been curtailed without following the due procedure of law and on that

count alone, the accused applicant should be granted bail.

8. The learned Additional Public Prosecutor submits that the accused applicant was formally arrested only at 11:00 am on 24.08.2026, therefore, there is no delay in production of the accused applicant before the learned CJM. He submits that the offence alleged involves commercial quantity and therefore, the rigors of Section 37 NDPS Act is squarely applicable in the instant case and therefore, he opposes the prayer of the bail.

9. This Court has heard the submissions made by the learned counsel for the respective parties as well as has taken into consideration the materials brought under the TCR in the instant case.

10. Taking into account the law laid down by the Hon'ble Supreme Court as well as the mandates as prescribed under Article 22(2) of the Constitution of India and Section 58 of BNS, it is seen that there is violation of the aforesaid provisions of the Constitution of India as well as the statutory provision of the BNS in the instant case.

11. From the materials available, it is seen that the accused applicant was effectively detained at around 1:30 pm on 23.08.2026. However, he was produced only on the next date i.e. on 24.08.2026 at 4:15 p.m and there is no explanation given by the prosecution side as far as the delay is concerned. Only explanation which could be found on record is that he was formally arrested at 11:00 am on 24.08.2026. However, the Hon'ble Supreme Court has already settled the law saying that the time of 24 hours would start from the time of detention and not from the formal arrest of the accused applicant.

12. Since the arrest of the accused applicant in the instant case is in violation of Article 22(2) of the Constitution of India which goes to the root of the matter, making the whole process of arrest vitiated, providing an unfettered right to the accused applicant to be released on bail.

13. In the instant case as discussed above, there are clear violation of the

provisions as mentioned above and therefore, this Court is of the considered view that the accused applicant should be granted bail.

14. Accordingly, it is directed that the accused applicant named above shall be released on bail immediately on furnishing bail bond of Rs.1,00,000/- with two sureties of like , one of whom shall be a local surety to the satisfaction of learned District & Sessions Judge, Dhubri subject to the following conditions:-

(i) the accused applicant shall appear before the trial Court as and when called for;

(ii) the accused applicant shall submit his details of Adhar Card, Pan Card, Passport, (if any) to the learned trial Court;

(iii) the accused applicant shall not try to influence any of the witnesses that may be involved in the instant case or tamper or hamper with the investigation in whatsoever manner.

15. In terms of the above, the instant application is disposed of.

JUDGE

Comparing Assistant