GAHC010212232026

2026:GAU-AS:14759

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

Case No. : Bail Appln./2970/2026

RABBUL ISLAM
S/O SAHED ALI, R/O PACHIM MOIRABARI, WARD NO 06, P.S. MOIRABARI, DISTRICT MORIGAON, ASSAM.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE LEARNED PUBLIC PROSECUTOR, ASSAM.

Advocate for the Petitioner : MS. S K NARGIS, MS N SULTANA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

05.10.2026

Heard Ms. N. Sultana, learned counsel for the accused and also heard Mr. P. Borthakur, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application, under Section 483 of the Bharatiya Nagarik Suraksha Sanhita

(BNSS), 2023, is preferred by accused, namely, Rabbul Islam, who has been languishing in jail hazot since 01.09.2026, in connection with Moirabari P.S. Case No.105/2026, under Section 61(2)/319(2)/318(4)/336(3)/340(2)/3(2) of Bharatiya Nyaya Sanhita (BNS), 2023, read with Section 66(C)/66(D) of Information Technology (Amendment) Act, 2008, read with Section 42(3)/42(6) of the Telecommunications Act, 2023 for grant of bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of one FIR lodged by S.I. Kankan Jyoti Gohain, Moirabari P.S., on 28.08.2026. The essence of allegation, in the FIR, dated 28.08.2026, is that he has received information from the Department of Enterprise having PoS Code 8724854811 run by Amdadul Hoque of Village Tatikata Pather, P.S.-Moirabari, was involved in the duplication of identity documents and forgery of Aadhaar Cards, PAN Cards and other Government identity documents, for the fraudulent procurement of SIM cards which were thereafter supplied to various persons, including anti-social elements, for use in cyber-frauds across the country. Upon the said information Moirabari P.S. General Diary Entry No.15 dated 27.08.2026, was recorded and a team of officers of Moirabari PS enquired into the matter and found that numerous complaints of cyber fraud, in respect of SIM cards traceable to the said PoS centre, had been registered on the National Cyber Crime Reporting Portal (NCRP). Accordingly, on 27.08.2026, a raid was conducted at the premises of Raja Enterprise, Moirabari in the presence of independent witnesses during which a large number of SIM cards of various telecom operators, one fingerprint scanner, one Axis Bank card-scanner, four nos. mobile phones, cash of Rs. 12,000/-, one credit card, QR codes and banking passbooks were recovered and seized from the possession of Amdadul Hoque.

4. Ms. Sultana, learned counsel for the accused, submits that the accused was taken into custody on 01.09.2026 and since then he has been languishing in jail hazoot. Ms. Sultana also submits that she is pressing this bail application not on merit of the case but on violation of statutory provision, i.e. Section 35(3) BNSS by the arresting authority. She submits that the offences under which the case has been registered, are punishable with imprisonment, which does not exceed seven years, and therefore, the Investigating

Officer was required to record cogent and specific reasons necessitating the petitioner's arrest and also the reasons as to why the issuance of a notice under the statutory mandate would not have sufficed in the facts and circumstances of the case.

4.1. Ms. Sultana also submits that a careful perusal of the Arrest Memo, the Grounds of Arrest and the Forwarding Report would reveal that no reasons has been assigned as to why the said provision has not been complied with and the learned Magistrate also has also without recording satisfaction in most mechanical manner remanded the accused to jail hazot. She also submits that for this non-compliance, the accused is entitled to be released on bail.

4.2. In support of her submission, Ms. Sultana has referred to the decision of Hon'ble Supreme Court in -

(i) **Satender Kumar Antil vs. CBI and Another**, reported in **(2022) 10 SCC 51**, and

(ii) **Satender Kumar Antil vs. Central Bureau of Investigation and Another,** reported in **2026 SCC OnLine SC 162**.

5. Per contra, Mr. Borthakur, learned Addl. P.P. has produced the case diary before this Court and submits that the I.O. has collected sufficient incriminating materials against the accused. However, he fairly submits that there is no indication in the Forwarding report as to why the provision of Section 35(3) BNSS could not be complied with.

6. Having heard the submissions of learned Advocates for both sides, I have carefully gone through the petition and the documents placed on record and also gone through the relevant provision of law and also gone through the decisions referred by Ms. Sultana, learned counsel for the accused.

7. It appears that accused was arrested on 01.09.2026, in connection with Moirabari P.S. Case No.105/2026, under Sections 361(2)/319(2)/318(4)/336(3)/340(2)/3(2) of BNS, read with Sections 66(C)/66(D) of IT Act, read with Section 42(3)/42(6) of Telecommunications Act and since then he has been languishing in jail hazot.

8. Notably, in the case of **Satender Kumar Antil (supra)**, in paragraph No.28 Hon'ble Supreme Court has re-iterated compliance of directions issued by it earlier, in the case of **Arnesh Kumar vs. State of Bihar**, reported in **(2014) 8 SCC 273**. Relevant paragraph is extracted herein below:-

> "**28.** We only reiterate that the directions aforesaid ought to be complied with in letter and spirit by the investigating and prosecuting agencies, while the view expressed by us on the non-compliance of Section 41 and the consequences that flow from it has to be kept in mind by the court, which is expected to be reflected in the orders."

8.1. Further, in the case of **Arnesh Kumar (supra)** Hon'ble Supreme Court, regarding the requirement of recording satisfaction by Investigating Officer before effecting arrest in case where punishment is seven years, is emphasized in para No.7.1. as under:-

> "**7.1.** From a plain reading of the aforesaid provision, it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.
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> **7.2.** The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest.
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> **7.3.** In pith and core, the police officer before arrest must put a question to himself, why

arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 CrPC."

8.2. Further, regarding the requirement of recording satisfaction by Magistrate before authorizing detention under Section 167 Cr.P.C., in case where punishment is seven years, is emphasized in para No.8 of the said decision and the same is extracted herein below:-

"**8.** An accused arrested without warrant by the police has the constitutional right under Article 22(2) of the Constitution of India and Section 57CrPC to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey:

8.1. During the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorised by the Magistrate in exercise of power under Section 167CrPC. The power to

authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner.

8.2. Before a Magistrate authorises detention under Section 167 CrPC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty-bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that the condition precedent for arrest under Section 41CrPC has been

satisfied and it is only thereafter that he will authorise the detention of an accused.

8.3. The Magistrate before authorising detention will record his own satisfaction, may be in brief but the said satisfaction must reflect from his order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement, etc. the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording his satisfaction in writing that the Magistrate will authorise the detention of the accused.

8.4. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant, and secondly, a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny.

9. … The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1) CrPC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 CrPC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid."

8.3. The proposition laid down in the case of **Satender Kumar Antil (supra) (I)** was subsequently affirmed in the second case of **Satender Kumar Antil (supra) (II)** and following directions were issued:-

"**33.** On the basis of the interpretation given by us, we conclude as follows:-

a. An arrest by a police officer is a mere statutory discretion which facilitates him to conduct proper investigation, in the form of collection of evidence and, therefore, shall not be termed as mandatory.

b. Consequently, the police officer shall ask himself the question as to whether an arrest is a necessity or not, before undertaking the said exercise.

c. For effecting an arrest, qua an offence punishable with imprisonment up to 7 years, the mandate of Section 35(1)(b)(i) of the BNSS, 2023 along with any one of the conditions mentioned in Section 35(1)(b)(ii) of the BNSS, 2023 must be in existence.

d. A notice under Section 35(3) of the BNSS, 2023 to an accused or any individual concerned, qua offences punishable with imprisonment up to 7 years, is the rule.

e. Even if the circumstances warranting an arrest of a person are available in terms of the conditions mentioned under Section 35(1)(b) of the BNSS, 2023, the arrest shall not be undertaken, unless it absolutely warranted.

f. Power of arrest under Section 35(6) read with Section 35(1)(b) of the BNSS, 2023, pursuant to a notice issued under Section 35(3) of the BNSS, 2023 is not a matter of routine, but an exception, and the police officer is expected to be circumspect and slow in exercising the said power."

9. In the instant case, from a perusal of the record and case diary it appears that the I.O., has not recorded any reason as to why no notice under Section 35(3) BNSS, 2023 has been issued and also not recorded any satisfaction regarding the necessity of arresting the accused.

10. It also appears that the learned Magistrate while allowing custody of the accused had also not recorded its satisfaction as to why the arrest of the accused person and remanding him to custody was necessary.

11. Section 35 of the BNSS, 2023, especially Section 35(1)(C) of the BNSS provides that the police officer has reason to believe on the basis of that information that such

person has committed the said offence. The Clause is extracted herein below:-

> "(c) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence:"

12. Thus, having considered the materials placed on record and also perusing the case diary this Court is unable to derive satisfaction in respect of the compliance of the said proposition by the I.O. and also by the learned Magistrate. Thus, non compliance of statutory provision is writ large from the record and case diary. It is well settled in the case of **Satender Kumar Antil (supra) (II)** that the statutory scheme must be followed in letter and spirit, and unjustified arrest furnishes a strong ground for bail.

13. In the result, this Court finds sufficient merit in this petition and accordingly, the same stands allowed. It is provided that on furnishing a bond of Rs.25,000/- (Rupees twenty five thousand) with one surety of like amount to the satisfaction of the learned Chief Judicial Magistrate, Morigaon, the accused shall be enlarged on bail.

14. In terms of above, the bail application stands disposed of.

Sd/- *Robin Phukan*
JUDGE

Comparing Assistant