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2026:GAU-AS:15107

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

Case No. : Bail Appln./3059/2026

MD TOUFIQUE ALI AND ANR
S/O LATE KAMAL PASA, R/O H NO 10, NAMGHAR PATH, PANJABARI, PS SATGAON, PIN 781037, DIST KAMRUP (M), ASSAM

2: MD ASIF ALI
S/O LATE KAMAL PASA
R/O H NO 10
NAMGHAR PATH
PANJABARI
PS SATGAON
PIN 781037
DIST KAMRUP M
ASSA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. P K SARMA, MS. B BHUYAN,MS M KAKOTY

Advocate for the Respondent : PP, ASSAM, MR. A MANNAF(INFORMANT)

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

07.10.2026

Heard Mr. P.K. Sarma, learned counsel for the accused and Mr. B. Sarma, learned Additional Public Prosecutor for the State, being respondent No. 1. Also heard Mr. A. Mannaf, learned counsel for the informant.

2. This application, under Section 483 of the BNSS, is preferred by accused, namely, **Md. Toufique Ali** and **Md. Asif Ali**, who have been languishing in jail hazot in connection with **Satgaon PS Case No. 114/2026**, under Sections 329(3)/117(2)/118(2)/3(5)/324(2) of the BNS, for grant of bail.

3. It is to be noted here that aforementioned case has been registered on the basis of one FIR, lodged by one Aasfiya Khanom, on 23.09.2026.

3.1. The essence of allegation in the FIR is that on 23.09.2026, at 02:30 am, one Ashif Ali; Taufique Ali; Shennaz begum; Farheen Yasmin; and Mazida Begum, along with approximately 100 unknown persons, allegedly entered into the compound of the under construction RCC building of the informant, situated at Namghar Path, by allegedly causing mischief of the main gate of the premises. Thereafter, accused Ashif Ali and Taufique Ali threatened the labourers engaged in the construction work by showing a pistol and assaulted them and as a result of which, several labourers sustained injuries. Thereafter, one of the injured masons informed the incident to the informant's husband, namely, Habibur Rahman, over phone. In the meantime, the accused persons allegedly vandalized and damaged the under-construction building, by means of an Excavator and forcibly took away the mobile phones and money, belonging to

the masons. Thereafter, when the informant and her husband reached the place of occurrence in their vehicle, accused Ashif Ali and Taufique Ali, allegedly broke the glass of their vehicle and also assaulted the informant's husband on his head with a sharp-edged weapon and forcibly took away a rum of Rs. 1,20,000/- from him.

4. Mr. P.K. Sarma, learned counsel for the accused, submits that the accused persons were arrested on 23.09.2026 and they were produced before the learned Eleka Magistrate on 24.09.2026, at about 04:30 pm, after elapsed of 24 hours and as such, there is violation of Section 58 of the BNSS and Article 22(2) of the Constitution of India. He also referred to the medical documents of the accused person, which indicate that they took treatment at KGMT Hospital at about 06:10 am, on 23.09.2026.

4.1. Mr. Sarma further submits that the police had not issued medical requisition form as provided in Assam Police Manual, Part – V, under Rule 177. He also submits that the IO in the forwarding report did not mention the ground of arrest while forwarding the accused persons to the learned Eleka Magistrate and that reason of arrest and ground of arrest are not same things and this has reference to Section 187(3) of the BNSS.

4.2. Mr. Sarma also submits that the accused persons also suffered injuries in the said incident and that the land, where the husband of the informant has been constructing the building, has already been declared in favour of the accused persons by the Civil Court. Mr. Sarma further submits that the injuries sustained by the victim are simple in nature and that except Section 118 of the BNS, rest of the offences are not so serious and that the accused persons will cooperate with the investigating agency and therefore, Mr. Sarma has contended to allow this petition.

5. Per-contra, Mr. B. Sarma, learned Additional Public Prosecutor, has produced the case diary along with the injury report of the victim, who is the husband of the informant herein this case. Mr. Sarma submits that the victim sustained injuries over his head and that though the same is simple in nature, as per medical report, yet the victim sustained those injuries on the vital part of the body and there was LOC^{+} and $Vomiting^{+}$ present. Mr. Sarma also submits that investigation is still going on and enlarging the accused persons at this stage would hamper the investigation and under such circumstances, he has contended to dismiss the petition.

6. On the other hand, Mr. Mannaf, learned counsel for the informant, has vehemently opposed the petition. He submits that the informant along with her husband have been constructing the house, over their own land, having obtained No Objection Certificate as well as the permission from the authority concerned and if the land belongs to the accused persons, then the authority would not have granted No Objection Certificate and permission. Mr. Mannaf also submits that the accused persons caused substantial damage to the under construction building and also severely beaten the husband of the informant and that though he was discharged from the Hospital, it was only at request and he is still undergoing treatment and that the offences are serious in nature and under such circumstances, he has contended to dismiss this petition.

7. Having heard the submission of learned counsel for both the parties, this Court has carefully gone through the petition as well as the documents placed on record and also perused the case diary with the assistance of learned Additional Public Prosecutor.

8. It is not in dispute that the accused persons were produced before the

learned Eleka Magistrate on 24.09.2026, at about 04:30 pm. But, from the order of the learned Eleka Magistrate, as well as from the Arrest Memo and forwarding report, it appears that they were arrested at about 01:30 pm, on 24.09.2026. Though Mr. P.K. Sarma, learned counsel for the accused, has taken a stand that they were arrested on 23.09.2026, at about 06:00 am, as per medical document, yet the learned Eleka Magistrate has recorded a categorical finding that there is no indication that the accused persons were taken to the Hospital by the police on 23.09.2026, and that they were under arrest at that time and as such, Mr. P.K. Sarma has failed to demonstrate the actual time of arrest of the accused persons and for that reason his submission cannot be accepted. And in that view of the matter, this Court finds that there is no violation of Section 58 of the BNSS and Article 22(2) of the Constitution of India.

9. It also appears that notices, under Sections 47 and 48 of the BNSS, with the grounds of arrest have duly been served upon both the accused persons and to that effect also, the learned Eleka Magistrate had recorded a finding in the remand order, dated 24.09.2026.

10. Further, perusal of the case diary indicates that the IO has collected sufficient incriminating materials against the accused persons. The investigation is still going on. It also appears that the injuries sustained by the victim though simple in nature, yet it is on the vital part of the body and therefore, it cannot be said that no prima-facie case, under Section 118 of the BNS, is made out against the present accused persons.

11. Accordingly, considering the materials collected so far in the case diary and the nature as well as gravity of the offence and also the stage of investigation, this Court is of the view that this is not a fit where the privilege of bail can be extended to the accused persons.

12. Accordingly, this bail application stands dismissed.

13. The case diary be returned.

JUDGE

Comparing Assistant