GAHC010219772026

2026:GAU-AS:15416

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

Case No. : AB/2509/2026

DURLAV NAMASUDRA
S/O. MOTILAL NAMASUDRA
R/O. BIJOYPUR,
P.S. RATABARI,
DISTRICT SRIBHUMI, ASSA.

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY P.P., ASSAM.

2:BIPLAB NAMASUDRA
S/O. GOKUL MONI NAMASUDRA
R/O. BIJOYPUR
P.S. RATABARI
DISTRICT SRIBHUMI
ASSAM. MOBILE NO. 995474011

Advocate for the Petitioner : MRS. S D CHOUDHURY,

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 12.10.2026

Heard Ms. S.D. Choudhury, learned counsel for the applicant. Also heard Mr.

P. Borthakur, learned Additional Public Prosecutor for the State respondent.

2. Apprehending arrest in connection with Ratabari PS Case No. 8/2025, under Section 65(1) of the BNS, 2023, read with Section 6 of the POCSO Act, this application under Section 482 of the BNSS, is preferred by applicant, namely, Durlav Namasudra, for grant of pre-arrest bail.

3. It is to be noted here that the above noted case has been registered on the basis of one FIR lodged by one Abinash Namasudra (actual name withheld) on 16.01.2025. The essence of allegation made in the FIR is that the aforesaid applicant, being the neighbor of the informant, entered into his house and committed rape without the consent of his sister, Smti. X, (name withheld) aged 13 years, who resides with his ailing mother and father as he resided outside his house for his avocation. And at present his sister is 6 months pregnant. After coming to know about this, he has come to the Police Station to lodge ejahar and that after coming to know about the pregnancy news, the accused left his home and went somewhere.

4. Ms. Choudhury, learned counsel for the applicant submits that this is the second pre-arrest bail application and the first one, being AB No. 1992/2026, was dismissed by this Court, vide order dated 24.09.2026. She submits that the ground for filing this successive pre-arrest bail application is that this Court while dismissing the earlier application, had not considered the fact that the present applicant is innocent and the DNA test was not conducted, and that the victim was deaf and dumb, and under such circumstances, she submits that she may be permitted to file one additional affidavit to bring on record additional grounds for filing the present application.

5. On the other hand, Mr. Borthakur, learned Additional Public Prosecutor

submits that after perusing the case diary, this Court was pleased to dismiss the earlier application, and that no fresh ground has assigned by the applicant in the present application, and as such, he has contended to dismiss this application.

6. Having heard the submissions of learned Advocates of both sides, this Court has carefully gone through the application and the documents placed on record, and also perused the order dated 24.09.2026, passed in AB No. 1992/2026.

7. It appears that after considering the submission of Ms. Choudhury, learned counsel for the applicant and having perused the case diary, and further having found prima facie materials against the applicant, the earlier application was dismissed by this Court, vide order dated 24.09.2026.

8. Today, Ms. Choudhury has failed to assign any fresh ground and though she has prayed for allowing her to file an affidavit to supplement the grounds, yet the prayer is found to be not tenable.

9. It is to be noted here that Hon'ble Supreme Court in the case of **Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr.**, reported in **(2005) 2 SCC 42**, Hon'ble Supreme Court has held as under:

> "**(i) An accused has a right to make successive applications for grant of bail.**
>
> **(ii) However, the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected.**
>
> **(iii) In such cases, the court also has a duty to record what are the fresh grounds which persuaded it to take a view different from the one taken in the earlier**

applications.

(iv) Successive applications cannot be entertained on the same grounds already rejected (including by higher courts). There must be a change in the fact situation or new/fresh grounds.

(v) Filing successive applications without any change in circumstances (as happened with the 9th bail application filed barely days after cancellation of the previous grant) amounts to an abuse of process and cannot be allowed merely by re-urging points already decided."

10. **Further,** in the case of **State of T.N. v. S.A. Raja,** reported in **(2005) 8 SCC 380,** Hon'ble Supreme Court has held as under:

> "**9. When a learned Single Judge of the same court had denied bail to the respondent for certain reasons and that order was unsuccessfully challenged before the appellate forum, without there being any major change of circumstances, another fresh application should not have been dealt with within a short span of time unless there were valid grounds giving rise to a tenable case for bail. Of course, the principles of *res judicata* are not applicable to bail applications, but the repeated filing of the bail applications without there being any change of circumstances would lead to bad precedents."**

11. In the instant case, having examined the ground assigned by the applicant and also considering the submissions of learned counsel for both the parties, and in the light of the proposition laid down by Hon'ble Supreme Court in the cases of **Kalyan Chandra Sarkar (supra)** and **S.A. Raja (supra),** as discussed herein above, this application is found to be not maintainable on

the same ground as the applicant has failed to assign any other ground for the application afresh. And accordingly, this application stands dismissed, at this motion stage itself.

JUDGE

Comparing Assistant