

GAHC010227892025



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

Case No. : Bail Appln./3311/2025

DHARMESWAR ROY
SON OF JAGAT DIPEN ROY
PERMANENT RESIDENT OF DHARAPUR CHARIALI, P.O. DHARAPUR, P.S.
AZARA, GUWAHATI-781014,
DIST. KAMRUP (M), ASSAM
PRESENTLY RESIDING AT AT
KAHILIPARA, UTTARAYAN VILLA, FLAT NO. 8-B, TOWER NO 5-B,
GUWAHATI-781019, DIST.KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : ., MR S.MITRA,MS. A KALITA,MR. S MITRA,MR A K
BORO,MR. T HUSSAIN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 09.01.2026

- 1.** Heard Mr. S. Mitra, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Additional Public Prosecutor for the State.
- 2.** This application under Section 483 of the BNSS, 2023 has been filed by

the petitioner, namely, *Dharmeswar Roy*, seeking bail in connection with Noonmati P.S. Case No. 22/2025 corresponding to G.R. Case No. 655/2025 under Sections 316(2)/318(4)/111(2) of BNS, 2023. The petitioner has been shown arrest in connection with the aforesaid case on 01.09.2025.

3. The learned Counsel for the petitioner has submitted that in the instant case, the petitioner was granted interim bail by this Court, by its order dated 15.10.2025 on the medical ground i.e., he was required to undergo surgery for the ailment from which he was suffering. He further submits that in the aforesaid interim order of the bail, a direction was also made to the petitioner to surrender before the Court of the learned Chief Judicial Magistrate, Kamrup(M) on 07.11.2025 and in the meanwhile, to co-operate in the investigation. However, on 07.11.2025, the petitioner failed to appear before the Chief Judicial Magistrate's Court due to some post-operative infections which he was suffering from. Thereafter, on 10.12.2025, this Court again extended the interim bail granted to the petitioner by its order dated 15.10.2025. Certain conditions were imposed by extending the interim bail order, on this occasion also. The petitioner was directed to appear before the Investigating Officer of Noonmati P.S. Case No. 22/2025 as and when so required by the investigating officer. A liberty was also granted to the Investigating Officer to interrogate the petitioner inside the jail if he remains in custody in connection with some other cases.

4. The learned counsel for the petitioner has fairly submitted that though he is not in touch with the petitioner and is unaware about his present status, however, as the petitioner has complied with this Court's order, his interim bail is liable to be made absolute.

5. The learned counsel for the petitioner has also submitted that the

petitioner was detained behind the bars in connection with the Noonmati P.S. Case No. 22/2025 for 52 days before he was granted interim bail by this Court and during the period when he was on interim bail, he has not violated any of the condition of the bail. He further submits that the period during which he was on interim bail may be regarded as the period in constructive custody of the Court so as to regard that period as in custody for computation of period to assess as to whether he would be entitled to default bail or not.

6. The learned counsel for the petitioner submits that the offence involved in this case entails punishment which may extend to life imprisonment (for an offence under Section 111 of BNS). He submits that even if the statutory period of detention is treated to be ninety days and if the period during which he was on bail is regarded as in constructive custody of the Court, and said period is also computed along with the period of fifty-two days during which he was in actual detention, it may be regarded that he has completed the statutory period of detention of ninety days, therefore, he is entitled to get default bail. In support of his submission, the learned counsel for the petitioner has cited ruling of the Apex Court in the case of "**Sundeeep Kumar Bafna Vs. State of Maharashtra and Another**" reported in "**(2014) 16 SCC 623**" as well as in the case of "**Susanta Kumar Samantaray and Another Vs. State of Odisha (VIG.)**" [CRLMC No. **1483/2023**], wherein the High Court of Odisha deemed the period during which the petitioner of that case was on interim bail to be in constructive custody of Court for grant of bail to him.

7. On the other hand, the learned Additional Public Prosecutor has produced the case diary of Noonmati P.S. Case No. 22/2025 and has submitted that the petitioner has not complied with the conditions which were imposed in

the first order by which he was granted interim bail in this case. He, submits that the petitioner may not be given advantage of default bail, even if he is found to be entitled to same, as he has violated the condition imposed by this Court while granting interim bail to him. He also submits that the question of default bail does not arise in this case as the petitioner has not completed 90 days of detention in this case.

8. He submits that petitioner is found involved in 12 another similar cases, where the modus operandi of deceiving the victims of those cases is same like that in the instant case. He also submits that though on 10.12.2025 i.e., the date on which he was granted interim bail by this Court, it was submitted before this Court by the learned counsel for the petitioner that the petitioner had to be examined and treated in Guwahati Medical College and Hospital, however, no document relating to his treatment in Guwahati Medical College and Hospital has been produced by the petitioner.

9. I have considered the submissions made by the learned counsel for both sides and have gone through the case diary produced by the learned Additional Public Prosecutor.

10. At the outset, let me make it clear that the facts of the case of "***Susanta Kumar Samantaray and another Vs. State of Odisha (VIG.)***" (supra) cited by the learned counsel for the petitioner are distinguishable from the facts of the instant case. In the said case, the petitioner of that case was granted interim anticipatory bail and in spite of him being on in anticipatory bail, he was remanded to custody by the Court when he appeared before the Trial Court. However, in the instant case, the petitioner has filed this application for bail under Section 483 of the BNSS and this is not a case where the prayer has been

made for grant of anticipatory bail.

11. The petitioner was granted interim bail in this case after he had undergone 52 days behind the bars on the medical grounds shown by him. This Court is, however, in agreement with the proposition of law dealt with by the High Court of Odisha in the aforementioned case that once a person appears before the Court, he may be regarded as in custody of the Court for the purpose of Section 439 of Cr.P.C as well as Section 483 of BNSS. However, that period during which he was on interim bail cannot be regarded as in "detention" within the meaning of Section 187 of BNSS for computation of statutory period under Section 187(3) of the BNSS. If that interpretation is given to the phrase constructive custody, as tried to be advanced by learned counsel for the petitioner, it would amount to giving benefit to the petitioner even though he is found to have committed infringement of the condition imposed on him while granting interim bail. Giving same meaning to the word 'custody' as used in Section 483 of BNSS and the word 'detention' as used in Section 187 of BNSS would be, in the considered opinion of this Court, fallacious which can never be the legislative intention while said words in Section 483 and Section 187 of BNSS, 2023 respectively.

12. Though, it appears that by order dated 10.12.2025, the interim bail granted to the petitioner by order dated 15.10.2025, was extended on the medical ground. However, this time no such ground of medical urgency has been taken by the petitioner. Further, considering the incriminating materials against the petitioner in the case diary and number of cases similar to that of the present case in which he has been involved in committing the similar offences does not justify grant of relief of anticipatory bail to him.

13. Hence, the prayer for making the interim bail granted to the petitioner on 15.10.2025 and 10.12.2025 absolute is hereby rejected and this bail application is accordingly dismissed.

14. Send back the case diary.

JUDGE

Comparing Assistant