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

Case No. : Bail Appln./3478/2026

RAJJAK SHAIKH ALIAS RAJJAK SK
SON OF RAHAMAN SHAIKH, RESIDENT OF VILLAGE GOBINDAPUR GHOSHPARA BEHARIA, P.S. HARIHARPARA, DISTRICT MURSHIDABAD, WEST BENGAL.

2: MUSTAFIJUR MONDAL ALIAS MUSTAFIJUR RAHAMAN
SON OF MOJIBAR MONDAL
RESIDENT OF VILLAGE TEHATTA BUNDAINAGAR
P.S. HARIHARP ARA
DISTRICT MURSHIDABAD
WEST BENGAL

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. A CHAUDHURY, MR. D BORA,MR. N MAHAJAN,MR. P K DAS

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 11.11.2026

Heard Mr. A. Choudhury, learned counsel for the accused and Mr. S.H. Bora, learned Additional Public Prosecutor for the State respondent.

2. This application, under Section 483, BNSS is preferred by two accused, namely, Rajjak Shaikh @ Rajjak Sk and Mustafijur Mondal @ Mustafijur Rahaman, who have been languishing in jail hazot in connection with Guwahati GRPS Case No. 215/2026, under Sections 61(2)/318(4)/319(2)/336/340 of the BNS, 2023, read with Section 66(C)/66(D) of the Information Technology (Amendment) Act, 2008, read with Section 42(3)(e) 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 an FIR lodged by ASI Jadav Chutia, I/C of Kamakhya GRP Outpost, on 07.10.2026.

3.1. The essence of the allegation in the FIR dated 07.10.2026, is that on 06.10.2026, at around 5 p.m., the informant along with staff conducted checking of passengers' luggage bags at Kamakhya Railway Station, and at about 6:30 p.m., they had apprehended two persons at platform No. 4 and during search, the informant had recovered 295 numbers of Reliance Jio SIM cards from the possession of Rajjak Shaikh and 100 numbers of Reliance Jio SIM cards from the possession of Mustafijur Rahaman with four mobile handsets, and seized the same in presence of witnesses.

4. Mr. Choudhury, learned counsel for the accused, by referring to the FIR

and also the forwarding report, submits that the accused persons were apprehended on 06.10.2026, at about 6:30 p.m., and they were produced before the Magistrate on 08.10.2026 and the learned Magistrate had remanded them to police custody, vide order dated 08.10.2026, and though the accused have been shown arrested formally on 07.10.2026, yet they had been kept in custody for more than 24 hours, which is violative of Article 22(2) of the Constitution of India.

4.1. Mr. Choudhury also submits that it is well settled in a catena of decision of Hon'ble Supreme Court, including the decision in **Sri Sujit Das and Ors. etc. vs. Union of India, in Criminal Appeal Nos. .. of 2026 [Arising out of Special Leave Petition (Criminal) Nos. 12451-12453 of 2026]**, especially from paragraph No. 69, that the 24 hours timeline, as mandated under clause (2) of Article 22 of the Constitution of India has to be counted from the time of detention of the person, and since in the instant case, the accused persons were produced before the Magistrate beyond 24 hours, their right guaranteed under clause (2) of Article 22 of the Constitution of India has been violated, and as such, they are entitled to be released on bail.

5. However, Ms. Bora, learned Additional Public Prosecutor submits that the plea taken before this Court was not taken before the learned Magistrate, while the accused persons were produced before the Magistrate and in view of the decision of Hon'ble Supreme Court in the case of **State of Karnataka vs. Sri Darshan Etc., in Criminal Appeal Nos. 3528-3534 of 2025 [Arising from SLP (Crl.) Nos. 516 – 522 of 2025]**, such plea has to be taken at the earlier point of time, and since they have not taken such plea before the Magistrate, they are not entitled to raise the issue before this Court and no prejudice is caused to them, and therefore, she has contended to

dismiss the petition.

6. Having heard the submissions of learned counsel for both the parties, this Court has carefully gone through the petition and the documents placed on record, and also gone through the decisions of learned counsel for both the parties.

7. The FIR at page No. 19, Annexure-A of the petition indicates that the accused persons were apprehended on 06.10.2026, at about 6:30 p.m., at platform No. 4 of Kamakhya Railway Station. Moreover, the forwarding report, at page No. 26, Annexure-B, of the petition indicates that formal arrest of the accused persons have shown on 07.10.2026, at 10 p.m. and they were produced before the learned Magistrate on 08.10.2026, at page No. 31 of the petition.

8. It is well settled in the case of **Sujit Das** (supra), especially in paragraph No. 69, that the 24 hours timeline as mandated under clause (2) of Article 22 of the Constitution of India would commence from the date and time of detention of the person detained when his liberty stands curtailed and not from the time of his formal arrest.

9. In view of the aforesaid proposition and in view of the production of the accused persons before the learned Magistrate beyond 24 hours, this Court is of the view that their right guaranteed under clause (2) of Article 22 of the Constitution of India has been violated, and accordingly, this Court is inclined to allow this petition.

10. It is provided that on their furnishing a bond of Rs. 50,000/-, each with one surety of like amount to the satisfaction of the learned Chief Judicial Magistrate, Kamrup(M), Guwahati, the accused be enlarged on bail.

11. The learned Magistrate may also impose any other condition to ensure presence of the accused persons during the trial.

12. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant