2026:GAU-AS:17427

THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Bail Appln. No. 3523/2026

1. **Sikandar Ali**, S/o-Chand Mo, R/o-165, Sindhi Muslim Basti Masuriya Pal Road, Jodhpur, Shastri Nagar, Rajasthan-342003.

2. **Ram Acharjee,** S/o-Kamala Kanta Acharjee, R/o-Samridhipur, Dagarbond, Karimganj, Dagarband Bazar, Assam-788156.

……*Accused-applicants*

VERSUS

1. **The Union of India**, represented by the Standing Counsel, DRI.

……*Respondent*

For the Applicant(s) : Mr. A.M. Bora, Senior Advocate
Mr. V.A. Choudhury, Advocate

For the Respondent(s) : Mr. S.C. Keyal, Senior Advocate/SC DRI
Mr. R. Kumar, Advocate

BEFORE
HON'BLE MR. JUSTICE ANJAN MONI KALITA

Date(s) of Hearing :- 17.11.2026

Date on which judgment is reserved	:-	17.11.2026
Date of pronouncement of judgment	:-	25.11.2026
Whether the pronouncement is of the operative part of the judgment?	:-	N/A
Whether the full judgment has been pronounced?	:-	Yes

JUDGMENT & ORDER (CAV)

(A.M. Kalita, J.)

1. Heard Mr. A.M. Bora, learned Senior Counsel, assisted by Mr. V. A. Choudhury, learned counsel for the accused-applicants. Also heard Mr. S.C. Keyal, learned Senior Counsel/Standing Counsel, DRI, assisted by Mr. R. Kumar, learned counsel for the respondent.

2. This is an application filed under Section 483 of the BNSS, 2023, praying for granting bail to the accused-applicants in connection with DRI Case No. 21/CL/IMP/GOLD/DRI/GZU/2026-27, dated 13.10.2026 lodged by the Senior Intelligence Officer, Directorate of Revenue Intelligence, Guwahati Zonal Unit before the Chief Judicial Magistrate, Kamrup (Metro), Guwahati.

3. The gist of the case is that one Intelligence Officer, DRI, Guwahati, lodged a complaint on 12.10.2026 alleging therein that specific intelligence information was received by the officers of the Directorate of Revenue Intelligence (DRI), Guwahati Zonal Office, to the effect that two persons, namely, Sikandar and Ram, would be boarding a bus from ISBT, Guwahati, at around 8:45 PM on

12.10.2026, carrying a substantial quantity of gold of foreign origin, intending to go to Siliguri. On receipt of the information, at around 20:50 hours on 12.10.2026, the DRI officers intercepted a bus bearing Registration No. AR-11-C-9900 near Tetelia, Guwahati. The two persons were identified and they were apprehended. The persons apprehended identified themselves as Sikandar Ali and Ram Acharjee respectively. On being searched, ten (10) yellow-colored metal bars in biscuit form were recovered from a concealed pocket of the jeans, worn by Sikandar Ali. On preliminary inquiry, both the persons, namely, Sikandar Ali and Ram Acharjee, admitted regarding the possession, transportation, assistance, and dealing with the recovered smuggled gold.

4. On the basis of the aforesaid allegations and the recovery of the alleged smuggled gold, DRI Case No. 21/CL/IMP/GOLD/DRI/GZU/2026-27 was submitted against the accused-applicants before the Chief Judicial Magistrate, Kamrup (Metro), Guwahati. The recovered item of gold, weighing about 1,166.24 grams, was valued at Rs. 1,76,56,874/-(Rupees One Crore Seventy-Six Lakh Fifty-Six Thousand Eight Hundred Seventy-Four).

5. After the arrest of the accused persons, they were produced before the Chief Judicial Magistrate, Kamrup (Metro), at 5:30 PM on 13.10.2026 and the learned Chief Judicial Magistrate remanded them to judicial custody till 26.10.2026. Since then, the accused-applicants are behind bars.

6. It is seen that bail applications were moved on behalf of the accused-applicants before the learned Chief Judicial Magistrate, Kamrup (Metro), Guwahati, on 26.10.2026, which were rejected.

7. Mr. A.M. Bora, learned Senior Counsel appearing for the accused-applicants, submits that during their arrest, the DRI officials though served notices under Section 47 of BNSS, 2023 with the grounds of arrest in English as well as in Hindi language, no written notices under Section 48 of BNSS, 2023 were served upon the accused-applicants. He submits that though two images of the notices in WhatsApp No. of the brother of accused-applicant no. 1 were sent, and a call was made to him by accused-applicant no. 1 himself to inform him about the arrest in his own language, that cannot be termed as service of notice under Section 48 of BNSS, 2023, in terms of the settled laws by the Hon'ble Supreme Court in catena of cases. He further submits that similar images were also sent to the wife of accused-applicant no. 2, who does not understand the English language and can only read and understand Bengali language. No written notice under Section 48 of BNSS, 2023 was served to her before production of accused-applicant no. 2. He submits that the notice under Section 48 of BNSS, 2023 was in English language and the memorandum of arrest was also in English language, which was sent to her by WhatsApp. It is also stated that a call was made to her by the accused-applicant no. 2 himself to inform her about the arrest in Bengali language. It is submitted that on a specific direction by accused-applicant no. 2 to his wife, the wife has replied "Yes, received", with the help of others as she could not understand English language. In view of the aforesaid facts, the

learned Senior Counsel submits that there is no compliance of Section 48 of BNSS, 2023 in the instant case and therefore, there is a clear violation of Section 48 of BNSS, 2023, in respect of arrest of accused-applicant no. 1 as well as accused-applicant no. 2. He submits that though the written communications were sent to the brother of accused-applicant no. 1 as well as wife of the accused-applicant no. 2, both in English as well as Hindi, by post on later dates, i.e., to the brother of accused-applicant no. 1 on 26.10.2026, and to the wife on 23.10.2026 respectively in delayed manner in violation of settled law. It is submitted that both the notices were sent almost nine days from their date of arrest. He submits that such delay in sending the written notice is in clear violation of the mandates of the Hon'ble Supreme Court in various cases, as held by the Hon'ble Supreme Court.

8. The learned Senior Counsel has relied on the case of **Vihaan Kumar vs. State of Haryana and another**, reported in **2025 SCC OnLine SC 269**, to submit that the requirement of communicating grounds of arrest in writing to the friends, relatives, or such other person as may be disclosed or nominated by the arrested person is a mandate under Article 22(1) of the Constitution of India. He further referred to the case of **Mihir Rajesh Shah vs. The State of Maharashtra and another**, reported in **2025 SCC OnLine SC 2356**, wherein the Hon'ble Supreme Court held that the grounds of arrest must be furnished in writing and must be communicated in writing in the language he or she understands. He submits that in the case of **Satender Kumar Antil vs. CBI**, reported in **2025 SCC OnLine SC 1578**, the Hon'ble Supreme Court held that service of notice through

WhatsApp or other electronic modes cannot be considered or recognized as an alternative or substitute to the mode of service recognized and prescribed under BNSS, 2023. In this connection, he has also referred to the case of **Sayed Jashim Ahmed vs. State of Assam [Criminal Petition No. 979/2025]**, decided on **26.08.2025** by the Hon'ble Gauhati High Court, as well as the case of **Cholingso Kora vs. State of A.P. & 5 Others**, decided by the Gauhati High Court dated **11.03.2026** in **Criminal Petition No. 243/2025**.

9. The learned Senior Counsel further submits that though in the case of **State of Karnataka vs. Sri Darshan**, reported in **2025 SCC OnLine SC 1702**, the Hon'ble Supreme Court has emphasized on the aspect of "demonstrable prejudice", since the case of **Vihaan Kumar (supra)**, was decided earlier by the Hon'ble Supreme Court, therefore, the ratio laid down in the case of **Vihaan Kumar (supra)** shall prevail. In this connection, he has referred to the case of **National Investigation Agency vs. Thangminlen Mate @ Lenin Mate [Criminal Appeal No. 234/2025]**, decided by a Division Bench of this Court on **21.08.2025**. He further referred to the case of **Union Territory of Ladakh & Others vs. Jammu and Kashmir National Conference & Another**, reported in **(2024) 18 SCC 643**, wherein the Hon'ble Supreme Court held that in the event of conflicting judgments by benches of equal strength of the Hon'ble Supreme Court, it is the earlier one which is to be followed by the High Courts.

10. From the above, the crux of the submission of the learned Senior Counsel is that in the instant case, the notices under Section

48 of BNSS, 2023, were not served to the family members of the accused-applicants in terms of the ratio laid down by the Hon'ble Supreme Court. The learned Senior Counsel submits that the mode of sending the notice by WhatsApp message cannot be termed as a written notice as mandated by the Hon'ble Supreme Court in the case of **Vihaan Kumar (supra)**. Therefore, he submits that since the very arrest of the accused-applicants is vitiated by non-compliance of the mandate of the Hon'ble Supreme Court, which is a statutory right flowing from Article 22(1) of the Constitution of India, therefore, further custodial detention of the accused-applicants in the instant case cannot be sustained and they should be released instantly.

11. Per contra, Mr. S.C. Keyal, the learned Standing Counsel, DRI, submits that there is no violation in the arrest of the accused-applicants. The accused-applicants were arrested in due compliance of all the required statutory and constitutional provisions in the instant case. He submits that a huge quantity of smuggled gold has been recovered from the accused-applicants. He further submits that notices under Section 48 of the BNSS, 2023, were duly sent to the brother and the wife of the accused-applicants immediately by WhatsApp images in the mobile phone nos. provided by the accused-applicants. He submits that the accused-applicants were allowed to call their respective family members, i.e., the brother and the wife of the accused-applicants immediately and the same was done by the accused-applicants. The accused-applicants, in their own language, had explained about the grounds of arrest to their family members. He further submits that the notices under Section 48 of the BNSS,

2023 were sent by WhatsApp message, which have been duly received by the brother and wife of the accused-applicants and they have acknowledged the receipt of the same. He further submits that written notices were also sent to the aforesaid brother and wife of the accused-applicants via speed-post, which were received by the respective family members of the accused-applicants. He submits that since the family members of the accused-applicants were not residents of Guwahati, i.e., the place of arrest, it was not possible for the DRI officials to immediately deliver the written notices. Therefore, the aforesaid procedure was followed, which is in consonance with the mandates of the Hon'ble Supreme Court. He submits that there is no prejudice caused to the accused-applicants in the instant case, as they have already been given the grounds of their arrest and the arrest memos were issued to them in compliance with the statutory provisions of BNSS, 2023 as well as notices were served upon the family members of the accused-applicants by WhatsApp image. He submits that substantive compliance has been made in the instant case and therefore, no prejudice has been caused to the accused-applicants by following the above procedure in the instant case. Accordingly, he submits that the bail application of the accused-applicants should be rejected.

12. In the instant case, the facts of the case are not disputed to the effect that the images of notices under Section 48 BNSS, 2023 were duly served upon the brother of accused-applicant no. 1 and the wife of accused-applicant no. 2, via WhatsApp mode, which had been duly received by them.

13. On perusal of the Case Diary, it is seen that the images of notice under Section 48 BNSS, 2023 as well as Memorandum of Arrest, both in English language, have been received by both the aforesaid brother and wife of the accused-applicants, respectively. It is also seen that written notices were also sent by speed-post to the aforesaid family members of the accused-applicants, which were delivered to them. However, the notices were sent after nine (9) days of their arrest. It is also seen that the notices were sent in bilingual language, in both English as well as in Hindi to the aforesaid relatives of the accused-applicants by post. It is also seen from the record that at the time of arrest, the accused-applicants were allowed to speak to their respective family members over telephone and explain the grounds of their arrest. This is seen to have been done from the notices itself, as the same facts were acknowledged by both the accused-applicants.

14. In the case of **Vihaan Kumar (supra)**, the Hon'ble Supreme Court, in its concluding part in paragraph 21(b), observed as follows:

> "21(b). The information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved."

15. In the same case, concurring with the aforesaid observation, *Hon'ble Justice N. Kotiswar Singh, J.* in his concluding part, observed as follows:

> ".....Hence, the requirement of communicating the grounds of arrest in writing is not only to the arrested person, but also to the friends, relatives, or such other person as may be disclosed or nominated by the arrested person, so as to make the mandate of Article 22(1) of the Constitution meaningful and effective; failing which, such arrest may be rendered illegal."

16. The case of **Vihaan Kumar (supra)** was elaborately discussed in the subsequent case of **Sri Darshan (supra)**, wherein the Hon'ble Supreme Court observed as follows:

> "20.1.3. The constitutional and statutory framework thus mandates that the arrested person must be informed of the grounds of arrest-but neither provision prescribes a specific form or insists upon written communication in every case. Judicial precedents have clarified that substantial compliance with these requirements is sufficient, unless demonstrable prejudice is shown.

20.1.4. In Vihaan Kumar vs. State of Haryana, it was reiterated that Article 22(1) is satisfied if the accused is made aware of the arrest grounds in substance, even if not conveyed in writing. Similarly, in Kasi Reddy Upender Reddy vs. State of Andhra Pradesh, it was observed that when arrest is made pursuant to a warrant, reading out the warrant amounts to sufficient compliance. Both these post-Pankaj Bansal decisions clarify that written individualized grounds are not an inflexible requirement in all circumstances.

20.1.5. While Section 50 Cr.P.C. is mandatory, the consistent judicial approach has been to adopt a prejudice-oriented test when examining alleged procedural lapses. The mere absence of written grounds does not *ipso facto* render the arrest illegal, unless it results in demonstrable prejudice or denial of a fair opportunity to defend."

17. From the above two cases, it is seen that the Hon'ble Supreme Court in the case of **Sri Darshan (supra)** has relied upon the ratio laid down by the Hon'ble Supreme Court in the case of **Vihaan Kumar (supra)**, which mandates communication of grounds of arrest. However, the Hon'ble Supreme Court in the aforesaid case

added that substantive compliance and a prejudice-oriented test are important while examining alleged procedural lapses.

18. In a recent case of **State of Rajasthan vs. Jhabra Ram [Special Leave Petition (Criminal) No. 13374 of 2026]**, decided by the Hon'ble Supreme Court on **28.10.2026**, the following has been observed by the Hon'ble Supreme Court:

> "22. As affirmed in Kasi Reddy Upender Reddy (supra) and State of Karnataka (supra), the constitutional framework requires that the arrestee be informed of the grounds of arrest, but does not insist upon written communication as an indispensable formality irrespective of the attendant circumstances. In the absence of demonstrable prejudice or denial of an opportunity to defend, an alleged procedural defect in the mode of service cannot *ipso facto* invalidate the detention or entitle an accused to regular bail, more so in cases involving grave allegations of espionage affecting national security and sovereign integrity."

19. It may also be relevant to refer to the case of **National Investigation Agency (supra)** decided by a Division Bench of this Court. In that case, the ground was non-communication of grounds of arrest, in writing, to the family members of the accused person. The facts also disclose that no records had been produced before the

Court that the grounds of arrest, in writing, had been communicated to the family members of the accused person. However, a plea was taken later by the NIA that a communication regarding grounds of arrest to the brother of the accused was supposedly sent on a later date but the same was not in record. In those factual circumstances, the Hon'ble Division Bench of the High Court observed as follows:

> "14. In the present case, the appellant has not been able to prove that they have complied with the requirement of Article 22(1), in so far as communication of the grounds of arrest of the accused respondent had been communicated to his family members."

15. In **Sri Darshan (supra)**, the Supreme Court had negated the submission of the learned counsel for the accused respondent that an arrest would be illegal if the grounds of arrest were not furnished immediately, thereby violating Article 22(1) of the Constitution of India and Section 50 Cr.P.C, now Section 47 of the BNSS. However, in the case of **Vihaan Kumar (supra)**, the decision of the Supreme Court therein is to the effect that the grounds of arrest has to be in writing and has to be furnished to the relatives of the arrested person. Thus, there appears to be dichotomy of views in different decisions of the

Supreme Court. However, keeping in view the judgment of the Constitution Bench of the Supreme Court in the case of **National Insurance Company vs. Pranay Sethi**, reported in **2017 (16) SCC 680**, wherein it was held that if there are conflicting decisions of equal benches of the Supreme Court, the earlier decision should be followed by the High Courts, we are bound to follow the earlier decision of the Supreme Court, which in this case would be **Vihaan Kumar (supra)**. Thus, keeping in view the decision of the Supreme Court in **Vihaan Kumar (supra)**, we are of the view that grounds of arrest in writing would be made known not only to the arrested person, but also to the family/relative of the arrested person."

16. Keeping in view the decision of the Supreme Court in the case of **State of Karnataka vs. Sri Darshan, etc. (supra)**, we are of the view that non-furnishing of grounds of arrest in writing to the family members of the arrested person immediately cannot be said to be illegal or violative of Article 22(1) of the Constitution of India and 47 of the BNSS. However, the grounds of arrest have to be furnished within a reasonable time. In the present case, the accused/respondent was arrested on 19.05.2025 and

till date of filing of the written objection by the appellant in Bail Application No. 486/2025, i.e. on 02.06.2025, the brother/relatives of the accused/respondent had not been provided a copy of the grounds of arrest. This delay of approximately 18 days, in our view, is beyond reasonable time, keeping in view the decision of the Supreme Court in **Vihaan Kumar (supra).** As such, the requirement of making the relatives of the accused/respondent aware of the grounds of arrest of an accused not having been made within reasonable time, it cannot be said that the delay could make the arrest illegal in terms of **Vihaan Kumar (supra).**"

20. From the aforesaid case, it is seen that the Division Bench of this Court has, in fact, also looked into the aspect of delay in communicating the grounds of arrest to the relatives of the accused-applicants while holding that such communication is a must. The facts before the Division Bench were that case records did not reveal that the family members of the accused person had been informed about the grounds of arrest of the accused applicant. However, a plea had been raised by the NIA that communication regarding grounds of arrest was sent to the brother of the accused person and the brother had acknowledged the receipt of information regarding the arrest. However, the NIA could not produce any documents to show that the grounds had been communicated to the family members of

the accused respondent. It is also recorded in the aforesaid case that the accused was arrested on 19.05.2025, and till the date of filing written objection by the prosecution in Bail Application No. 486/2025, i.e. on 02.06.2025, the brother/relatives of the accused person had not been provided a copy of the grounds of arrest. In those circumstances, the Hon'ble Division Bench of this Court held that the delay of approximately 18 days is beyond reasonable time and such delay in communication of the grounds of arrest is illegal in terms of **Vihaan Kumar (supra)**.

21. The contention of the learned Senior Counsel appearing for the accused-applicants regarding service of Section 48 BNSS notice by way of WhatsApp mode, other than in writing, cannot be accepted. This is due to the fact that in the cases referred by the learned Senior Counsel, namely, **Sayed Jaseem Ahmed (supra)** and **Cholingso Kora (supra)**, the issue was relating to service of notice under Section 35 of BNSS, 2023 which is materially different from a notice under Section 48 of BNSS, 2023 due to the different purposes of the two notices.

22. In that context, in both the cases, the Gauhati High Court, relying on the case of **Satender Kumar Antil (supra)**, decided that service of notice through WhatsApp or other modes of electronic communication cannot be considered or recognized as an alternative or substitute to the mode of service recognized and prescribed under the BNSS, 2023 in case of notice under Section 35 of BNSS, 2023. It is seen that in none of the cases, including the case of **Satender Kumar Antil (supra)**, was the issue regarding notice

under Section 48 of BNSS, 2023. In this connection, in various cases, the Hon'ble Supreme Court has already taken note of the fact that no mode of service of notice under Section 48 BNSS, 2023 has been provided in the BNSS, 2023. BNSS, 2023 also does not provide any bar in communicating the notice via any electronic mode, including WhatsApp. However, written communication is mandated due to the fact that written communication of the contents will make the accused-applicants and their family members aware of the exact grounds on which the accused-applicants have been arrested, and they can accordingly prepare for release of the accused-applicants by preparing a petition in a purposeful manner. In this connection, paragraph no. 49 of the case of **Mihir Rajesh Shah (supra)** being relevant, is extracted hereinbelow:

> ″49. It is by now settled that if the grounds of arrest are not furnished to the arrestee in writing, this non-compliance will result in breach of the constitutional and statutory safeguards, hence rendering the arrest and remand illegal, and the person will be entitled to set at liberty. The statute is silent with regard to the mode, nature, or time and the stage at which the grounds of arrest have to be communicated. Article 22 says ″as soon as may be″, which would obviously not mean prior to arrest, but can be on arrest or thereafter. The indication is as early as it can be conveyed. There

may be situations wherein it may not be practically possible to supply such grounds of arrest to the arrested person at the time of his arrest or immediately."

23. From the above, what is discernible is that there may be various occasions wherein communication in writing to the family members of the accused-applicants may not be possible due to various factors, like the family members not residing in the same place where the accused person has been arrested. In that situation, it may not be possible to communicate about the arrest or provide the grounds of arrest in writing to the accused person.

24. In the instant case, it is seen that the family members of the accused-applicants were immediately provided with the written notices of their grounds of arrest by sending the whole contents of the notices along with the arrest memos to the relatives of the accused-applicants via WhatsApp mode. The receipt of those notices has been duly acknowledged by the relatives of the accused-applicants immediately. It is also seen that the accused-applicants themselves explained about their grounds of arrest to their respective relatives via mobile phone. Therefore, it is seen that the written contents of the notices have been duly received by the relatives of the accused-applicants in the instant case, though the mode of sending the same is WhatsApp. It is also discussed that there is no bar in the BNSS, 2023 regarding sending of notice under Section 48 BNSS, 2023 via WhatsApp.

25. This Court has also considered the fact that the relatives of the accused-applicants were residing in a different place from the place of their arrest. Therefore, the easiest and most effective way to communicate such written notice to the relatives is WhatsApp message, which has been used widely by all at present. However, if there is a case made out by the relatives of the accused-applicants that they have not received the notices via WhatsApp, then the case could have been different.

26. In the instant case, though a plea has been taken that the messages were not sent in the language understood by the relatives, this Court does not find that an acceptable excuse due to the fact that the receipt of the notices via WhatsApp mode has been acknowledged by the respective relatives. It is also seen that subsequent to the aforesaid WhatsApp communications, the written notices via speed-post were also sent to the relatives, though after nine days and the same were received by them. In view of the aforesaid, this Court does not find that any undue delay has been caused which would make the whole arrest vitiated.

27. This Court is of the view that communication by the accused-applicants with their respective relatives via mobile phone explaining the details of the grounds of arrest, the images of the notice sent via WhatsApp, and subsequent sending of the written notices under Section 48 of BNSS, 2023 which were received by the relatives of the accused-applicants, cannot be termed as violation of the mandates of the statutory provision of Section 48 of BNSS, 2023

as well as the ratios laid down by the Hon'ble Supreme Court in the cases discussed above.

28. In view of the aforesaid, this Court does not find any merit in the instant bail application, and therefore the same is rejected.

29. Case Diary be returned.

JUDGE

Miriam Degu
(SPA)