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

Case No. : Crl.Pet./1643/2026

SRI BHUPEN SAIKIA ALIAS BABLU
SON OF SRI HOMESWAR SAIKIA, RESIDENT OF VILLAGE MILONPUR SAIKIA CHUBURI, P.S. TEZPUR, DISTRICT SONITPUR, ASSAM-784501

VERSUS

STATE OF ASSAM AND ANR
REPRESENTED BY THE LEARNED PUBLIC PROSECUTOR ASSAM.

2:BIKY SAIKIA
S/O LATE MAN SAIKIA
RESIDENT OF VILLAGE MILONPUR SAIKIA CHUBURI
P.S. TEZPUR
DISTRICT SONITPUR
ASSAM- 78450

Advocate for the Petitioner : MR. A GANGULY, MR. A DHANUKA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE SHAMIMA JAHAN

ORDER

25.11.2026

1. Heard Mr. S.K. Singh, learned Senior Counsel assisted by Mr. A. Ganguly, learned counsel appearing for the petitioner. Also heard Ms. A. Begum, learned APP

appearing for the State of Assam.

2. By this application filed under Section 528 of the BNSS, 2023 the petitioner has challenged the order dated 17.07.2026 passed by the learned Sessions Judge, Sonitpur, Tezpur in Misc. Criminal Case No. 10/2026 whereby the petition seeking transfer of Sessions Case No. 126/2025 from the Court of the learned Additional Sessions Judge (FTC), Tezpur to any other Court of Sessions Judge was rejected.

3. The learned counsel for the petitioner submits that the petitioner has no objection to the case being tried by the learned Additional Sessions Judge (FTC), Tezpur and does not press for its transfer to any other Court. However, the petitioner has a grievance only against the learned Additional Public Prosecutor conducting the case on behalf of the prosecution before the said court.

4. The learned counsel for the petitioner submits that the petitioner had filed an application before the learned District and Sessions Judge, Sonitpur, Tezpur which was registered as Misc. Criminal Case No. 10/2026. In the said application, the petitioner had raised a grievance that the learned Additional Public Prosecutor, who had been entrusted with the case instituted against the petitioner was known to the informant and had allegedly declared that he would ensure the conviction of the petitioner. It is further stated in the said application that the alleged statement made by the learned Additional Public Prosecutor had created a reasonable apprehension in the mind of the petitioner that he would not receive a fair, unbiased and dispassionate trial. The learned counsel for the petitioner further submits that the role of a Public Prosecutor is to act objectively and assist in the administration of justice and not to act as a partisan seeking to secure the conviction of an accused person. The learned counsel submits that the learned Sessions Judge, Sonitpur, Tezpur considered the said application but rejected the same vide order dated 17.07.2026 holding that although allegations had been

made against the learned Additional Public Prosecutor regarding his close relationship with the son of the victim but the petition contained only bald assertions and did not disclose the nature or extent of the alleged relationship. It was further observed that neither the source of information nor the circumstances giving rise to the petitioner's apprehension of not receiving a fair trial had been disclosed in the application. It was also noted that no particulars had been furnished to substantiate the allegation that the learned Additional Public Prosecutor had assured that the petitioner would be convicted nor had any affidavit been filed in support of such allegations.

5. The learned counsel for the petitioner, however, submits that it is a matter of common knowledge that the learned Additional Public Prosecutor shares a close relationship with the son of the alleged victim and that the latter was brought up by his maternal uncle who stays in the same place with the said Additional Public Prosecutor. He further submits that whenever the case is taken up before the learned trial court, the son of the alleged victim meets and discusses the case with the said Additional Public Prosecutor.

6. On the other hand, Ms. A. Begum, learned Additional Public Prosecutor submits that even if the learned Additional Public Prosecutor shares a close relationship with the son of the alleged victim, the same by itself cannot lead to a conclusion that the said Public Prosecutor would not act fairly in conducting the case. She further submits that the order dated 17.07.2026 wherein the learned Sessions Judge has discussed the matter in detail suffers from no infirmity.

7. It is a settled position of law that where an accused person raises an apprehension that he may not receive a fair and unbiased trial or expresses a lack of confidence in the fairness of the proceedings and is able to substantiate such

apprehension by placing relevant materials and proper information before the Court, a case may be transferred from one Court to another.

8. In *Jahira Habibullah H. Sheikh vs. State of Gujarat*, reported in *(2004) 4 SCC 158*, the Hon'ble Supreme Court transferred the case from the State of Gujarat to the State of Maharashtra and directed a retrial, taking into consideration the apprehension that a fair trial would not be possible in the State of Gujarat. The relevant portion of the judgment is quoted herein below:

> "*This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crime being public wrong in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interests of society is not to be treated completely with disdain and as persona non grata. Courts have always been considered to have an over-riding duty to maintain public confidence in the administration of justice - often referred to as the duty to vindicate and uphold the 'majesty of the law'. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a Court of law in the future as in the case before it. If a criminal Court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators. The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the Courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at*

the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial. A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny. Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty stage-managed, tailored and partisan trial. The fair trial for a criminal offence consists not only in technical observance of the frame, and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice."

9. In the present case, it is noticed that the petitioner has categorically stated that the learned Additional Public Prosecutor entrusted with the conduct of the case, in which the petitioner is an accused shares a close personal relationship with the son of the alleged victim. It is further stated that the petitioner and the alleged victim reside in a small village and that it has come to the knowledge of the villagers that the learned Additional Public Prosecutor had assured the alleged

victim that he would ensure the conviction of the petitioner in the said case. It is also stated that the son of the alleged victim was brought up by his maternal uncle who resides in the same village as the learned Additional Public Prosecutor.

10. In view of the aforesaid facts and circumstances, it is noticed that the petitioner apprehends that he may not be dealt with fairly in the proceedings of the case. It would not be out of context to mention that a Public Prosecutor occupies a position of considerable responsibility in the administration of criminal justice. A Public Prosecutor is not expected to act as a counsel seeking to secure the conviction of an accused person at all costs. The role of a Public Prosecutor is to place all relevant materials before the Court so that the truth emerges and justice is done. It would also be apposite to mention that whenever an accused person apprehends that he may not receive a fair trial for one reason or another, the Court is required to examine such apprehension. If upon consideration of the materials placed before it, the Court finds that such apprehension has some reasonable basis appropriate steps ought to be taken.

11. In the instant case, since the petitioner has a reasonable apprehension that he may not receive a fair trial in view of the alleged close relationship between the learned Additional Public Prosecutor entrusted with the case and the son of the alleged victim, this Court directs the learned Sessions Judge, Sonitpur, Tezpur to consider replacing the learned Additional Public Prosecutor presently conducting the case with another learned Additional Public Prosecutor, as the maxim goes, "Justice should not only be done, but should manifestly and undoubtedly be seem to be done."

12. Accordingly, the order dated 17.07.2026 passed by the learned Sessions Judge, Sonitpur, Tezpur in Misc. Criminal Case No. 10/2026 is hereby set aside and quashed.

13. It is further noticed that the learned Sessions Judge while passing the impugned order had observed that the petitioner had not disclosed the source of information or the circumstances giving rise to his apprehension that he would not receive a fair trial. It was also observed that no particulars had been furnished in support of the allegation that the learned Additional Public Prosecutor had assured the alleged victim that he would secure the petitioner's conviction.

14. In view of the above, this Court directs the petitioner to file a fresh application before the learned Sessions Judge, Sonitpur, Tezpur substantiating his apprehension by placing relevant materials on record. The learned Sessions Judge, Sonitpur, Tezpur shall consider the same in the light of the observations made by the Hon'ble Supreme Court.

15. The petition stands disposed of.

JUDGE

Comparing Assistant